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SUPREME COURT OF THE UNITED STATES.

No. ~~315~~ 56

GRINFILL BLAKE AND ELIZABETH J. DEVEREUX BLAKE, HIS WIFE, AND JOHN TOWNSEND AND GEORGINA T. TOWNSEND, HIS WIFE, APPELLANTS,

vs.

WILLIAM J. HAWKINS AND WALTER CLARK, AS ASSIGNEES IN BANKRUPTCY OF THE ESTATE AND EFFECTS OF THOMAS P. DEVEREUX, DECEASED, A BANKRUPT, WALTER CLARK AND JOHN DEVEREUX, AS TRUSTEES OF THE ESTATE OF THE SAID THOMAS P. DEVEREUX, AND RICHARD C. BADGER, ADMINISTRATOR DE BONIS NON CUM TESTAMENTO ANNEXO OF FRANCES DEVEREUX, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

FILED NOVEMBER 22, 1875.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

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1 *Caption.*

In the circuit court of the United States for the eastern district of North Carolina, held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the honorable Hugh L. Bond, circuit court judge for the 4th circuit, presiding, and the honorable George W. Brooks, district court judge of said district, associate judges of said circuit court, sitting in equity, on Monday the thirtieth day of November, in the November term of said court, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-ninth year, convened on the last Monday in November, being the thirtieth day of said month.

N. J. RIDDICK, *Clerk.*

Title of cause.

GRINFILL BLAKE AND WIFE, ELIZABETH J. Devereux Blake, John Townsend and wife, Georgiana P. Townsend, complainants,
against
WILLIAM J. HAWKINS AND WALTER CLARK, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, dec'd, a bankrupt; Walter Clark and John Devereux, as trustees of the estate of the said Thomas P. Devereux, R. C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, dec'd, defendants.

2 *Filing of pros. bond and original bill.*

Be it remembered, that on the 26th day of March, in the year of our Lord one thousand eight hundred and fifty-nine, Frank G. Q. Umsted and Elizabeth J. Devereux Umsted, his wife, both of the city, county, and State of New York, and citizens of said State of New York; and Georgiana P. Devereux, of Stratford, in the county of Fairfield, and State of Connetticut, and a citizen of said State of Connetticut, complainants, by their attorneys, Daniel G. Fowle and W. Graham Haywood, filed, in the office of the clerk of the circuit court of the United States for the district of North Carolina, at Raleigh, in said district, their prosecution bond, and also their original bill in equity against Thomas P. Devereux, of the county of Halifax, and State of North Carolina, and a citizen of said State of North Carolina, and the Right Reverend Leonidas Polk, bishop of Louisiana, and Frances Ann Polk, his wife, both of New Orleans, in the county of Orleans, and State of Louisiana, and citizens of said State of Louisiana, defendants, with numerous exhibits thereunto attached; which said bond, original bill, and exhibits, are in the words and figures following, to wit:

Prosecution bond.

STATE OF NORTH CAROLINA:

Circuit court of the United States.

Know all men by these presents, that we, Daniel G. Fowle and W.

Graham Haywood, attorneys for Frank G. Q. Umsted, and Eliza-
3 beth J. D. Umsted, his wife, & Georgiana P. Devereux as principals, and James S. Woodard as surety, are held and firmly bound unto Thomas P. Devereux, Leonidas Polk, and Frances Ann Polk, his wife, in the just and full sum of three hundred dollars, to the payment of which well and truly to be made, we do hereby bind ourselves, our heirs, executors and administrators.

In testimony whereof, we have hereunto set our hands and affixed our seals, this 26th March, A. D. 1859.

The condition of the above obligation is such, that whereas the above-named Umsted and wife, and G. P. Devereux, have this day instituted a suit, in equity, in the circuit court of the United States, for the district of North Carolina, against the above-named obligees. Now if the said complainants shall prosecute their said suit, and pay all such costs and damages as shall be awarded against them, then this obligation to be void, otherwise to be of full force.

DANIEL G. FOWLE. [SEAL.]
W. GRAHAM HAYWOOD. [SEAL.]
JAMES S. WOODARD. [SEAL.]

Original bill in equity.—Filed M'ch 26th, 1859.

United States circuit court, district of North Carolina. In equity.

FRANK G. Q. UMSTED, ELIZABETH J. DEVEREUX UMSTED, and GEORGIANA P. DEVEREUX,
against
THOMAS P. DEVEREUX AND OTHERS.

4 To the honorable the judges of the circuit court of the United States for the district of North Carolina:

Frank G. Q. Umsted and Elizabeth J. Devereux Umsted, his wife, both of the city, county and State of New York, and citizens of said State of New York; and Georgiana P. Devereux, of Stratford, in the county of Fairfield, and State of Connecticut, and a citizen of said State of Connecticut, bring this their bill against Thomas P. Devereux, of the county of Halifax and State of North Carolina, and a citizen of said State of North Carolina, and the Right Reverend Leonidas Polk, bishop of Louisiana, and Frances Ann Polk, his wife, both of New Orleans, in the county of Orleans and State of Louisiana, and citizens of said State of Louisiana.

And thereupon your orator and oratrixes complain and say, that your oratrixes are the only children of George P. Devereux, late of Bertie County, in the State of North Carolina, deceased; that your oratrixes' said father departed this life on the 13th day of May, A. D. 1837; that your oratrix Elizabeth J. Devereux Umsted, was then in the fourth year of her age, having been born on the 12th day of August, A. D. 1833; that your oratrix, Georgiana P. Devereux, was born on the 10th day of August next following her said father's decease; that your
5 oratrixes' said father, by his last will and testament, which was duly proved and allowed, appointed your oratrixes' mother to be their guardian, during the period of their infancy. That your oratrixes' mother, soon after the death of her husband, removed from the State of North Carolina to the State of Connecticut, where she has ever since resided; that your oratrixes resided with their said mother, and were

under her sole guardianship and protection, during the entire period of their infancy, and your oratrix Georgiana P. Devereux still so resides; that your oratrix Elizabeth J. Devereux Umsted intermarried with your orator, Frank G. Q. Umsted, on the 20th day of June, A. D. 1855, and thereupon removed to the State of Missouri, where she resided with her said husband, until about the month of November, A. D. 1857, when they removed to the city of New York, where they have since resided.

That the defendants, Thomas P. Devereux and Frances Ann Polk, and your oratrixes' father, were brothers and sister, being the only children of John Devereux and Frances, his wife, both late of the city of Raleigh, in the county of Wake, in the State of North Carolina, deceased; that the said Frances Devereux, your oratrixes' grandmother, survived the said John Devereux, her husband; that said Frances departed this life on the 3rd day of June, A. D. 1849, leaving her said son & daughter and your oratrixes as representing their deceased
6 father, her sole heirs at law and next of kin.

That said John and Frances Devereux, during their life-time, and on the 3rd day of July, A. D. 1839, by deed of that date, conveyed to the said Thomas P. Devereux and his heirs a large amount of real estate, being all the real estate which had descended to the said Frances from her brother, George Pollok, then late of the county of Halifax and State of North Carolina, deceased; that said conveyance was declared to be upon and subject to the following (among other) charges and trusts:

"First. That the said Thomas P. Devereux and his heirs and assigns shall, on the 1st day of March, in each and every year, during the life of the said Frances Devereux, pay to the said Frances, into her own hands or according to her own order, and to her sole and separate use, and subject to her own disposal, as if she were a femme sole and unmarried, the yearly sum of three thousand dollars. * *

"Thirdly. That the said Thomas P. Devereux, his heirs or assigns, shall invest for or pay to the said Frances Devereux, at such time, in such portions, and in such manner and form as she shall direct and require, to and for her own sole and separate use, and subject to her own disposal, by will, deed, or writing in the nature thereof, or otherwise, to all intents and purposes (notwithstanding her coverture), as if she were a femme sole and unmarried, the sum of fifty thousand dollars."
7 And for greater certainty a copy of said deed is hereto annexed, marked "A"; and your orator and oratrixes pray that the same may be considered a part of this bill.

That a large part of said annual sum of three thousand dollars and of said gross sum of fifty thousand dollars, as your orator and oratrixes are informed and believe, remained unpaid by the said Thomas P. to the said Frances, or according to her appointment, order, or direction, at the time of the decease of the said Frances; and that said Frances, at the time of her decease, was seized and possessed of a considerable amount of other property, real and personal, including a considerable number of negro slaves.

And your orator and oratrixes, further complaining, say that, after the death of said Frances Devereux, two paper writings were found, each of them being signed by the said Frances Devereux, and each of them purporting to be her last will and testament, one of said paper writings bearing date the 23rd day of December, A. D. 1847, and the other on the 20th day of August, A. D. 1848. That each of said paper writings commenced as follows:

"In the name of God, amen. I, Frances Devereux, of the State of

North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this
8 my last will and testament, intending thereby also to execute all powers vested in me and enacted by any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself."

That the dispositions contained in both said paper-writings consisted chiefly of pecuniary legacies to several charitable institutions, and some small legacies and annuities to female friends of said deceased; that said paper-writing bearing earliest date contained a legacy of four thousand dollars to each of five several charitable institutions; that in said paper-writing bearing latest date each of the said five legacies was cut down to two thousand dollars; that in other respects said two paper-writings were substantially alike; that your orator and oratrixes are informed and believe that said Frances, between the dates of said paper-writings, disposed of large sums of money for charitable purposes, and that this was the cause of said five legacies being cut down in said paper-writing bearing latest date.

That Frederick Nash, senior, the said Thomas P. Devereux, John Primrose, and William D. Cooke were named as executors in both said
9 paper-writings, and the said Primrose and Nash are now deceased, having died since the appointment of S. W. Whiting as administrator cum testamento annexo. That neither of said paper writings contained any residuary devise or bequest, and that the property left by said Frances was much more than sufficient to pay all her debts, funeral, and testamentary expenses, and the legacies and annuities contained in either of said paper-writings.

Copies of both said paper-writings are for greater certainty hereto annexed, marked B and C, respectively, and your orator and oratrixes pray that the same may be considered a part of this bill.

That your orator and oratrixes have not sufficient knowledge or information to form a belief whether either of said paper-writings was the last will and testament of said Frances, nor whether said Frances was, at the date of either of said paper-writings, of a sound and disposing mind, memory, and understanding; nor whether either of said paper-writings was properly executed as a last will and testament, according to the laws of North Carolina; but they are informed and believe that if the said Frances was of a sound and disposing mind, memory, and understanding at the earliest of the dates above named, she was so also at the latest of the dates above named; that the defect in the execution of said paper-writings, if any, was the incompetency of one of the
10 attesting witnesses thereto, on account of interest, and that this objection was equally applicable to both said paper-writings; and they are also informed and believe, that if either of said paper-writings was the last will and testament of said Frances, it was said paper-writing bearing latest date.

And your orator and oratrixes, further complaining, say, that soon after the death of said Frances Devereux, the said Thomas P. Devereux, being then on a visit to your oratrixes' mother, in the State of Connecticut, informed her that he intended to contest the probate of both said paper-writings, and expressed great confidence that said contest would be successful, thereby inducing her to believe that there was no conflict of interest between the said Thomas P. Devereux and your oratrixes;

and that their interests would be protected, though they should take no active part in contesting the probate of said paper-writings.

That soon after the said T. P. Devereux's return to the State of North Carolina, he wrote to your oratrixes' mother, saying, that the probate of said paper-writings was about to be contested by him, and requesting her to join with him on behalf of your oratrixes; that she, in reply to said communication, expressed reluctance to joining in said contest, from feelings of delicacy, but declared her willingness to join, if the said Leonidas Polk and Frances Ann, his wife, also joined; but she, as your
11 orator and oratrixes are informed and believe, gave the said T. P. Devereux no authority whatever to act on behalf of your oratrixes.

That the said T. P. Devereux, without any further communication with your oratrixes' mother, and without any authority in that behalf, pretended to employ William H. Haywood, j'r, then a counsellor at law, practicing in the State of North Carolina, to appear for your oratrixes, and contest the probate of said paper-writing.

That at a court of pleas and quarter sessions, begun and held at the court-house, in the city of Raleigh, within and for the county of Wake, on the third Monday (the 26th day) of August, A. D. 1849, said paper-writings were propounded by said William D. Cooke, one of the executors therein named, for probate as the last will and testament of said Frances Devereux, deceased; that said paper-writings were thereupon filed in said court, and an order made that subpœnas issue to the subscribing witnesses, and that notice issue to the next of kin of said deceased, citing them to be and appear at the then next court to hear the proceedings of said court in respect to the probate of said paper-writings as the last will and testament of said deceased.

That on the same day the said William H. Haywood, j'r, procured himself, by an order of said court, to be appointed guardian ad
12 litem for your oratrixes, and to defend their rights and interests in said proceedings, and caused it to be stated on the records of said court that said order was made at the instance of their mother, who resided with them in Connecticut, which statement, as your orator and oratrixes are informed and believe, was made at the suggestion and upon the authority of the said Thomas P. Devereux, and was entirely false.

That the said Thomas P. Devereux, in entire contradiction to what he had so as aforesaid stated and represented to your oratrixes' mother and induced her to believe, gave out and represented in the State of North Carolina, and to the persons and institutions interested under said paper-writings as legatees, that he took no part in said proceedings, but was entirely neutral, and that the probate of said paper-writings was to be contested by your oratrixes alone; and accordingly he admitted notice of said proceedings, but did not appear therein. That during the pendency of said proceedings, the said Thomas P. Devereux entered into negotiations with said charitable institutions, the principal legatees in said paper-writings, for the purchase of their respective legacies; that the said William H. Haywood, j'r, while professing to act for your oratrixes in said proceedings, acted as the attorney and counsel of said Thomas P. Devereux in said negotiations, and as such conducted the correspondence between the said legatees and the said Thomas
13 P. Devereux; that the said Haywood, acting as such attorney and counsel, made a proposition to said legatees to the effect that said Thomas P. Devereux would pay to each of them the sum of two thousand dollars, in consideration that they would assign and trans-

fer to him for his own use and benefit all their claims, rights, and interests under said paper-writings.

That while said negotiations were pending, and before said proposition was accepted, such proceedings were had in said court of pleas and quarter sessions, that on the third Monday in August, A. D. 1850, upon an issue awarded to try whether said paper-writings or either of them was the last will and testament of said Frances Devereux, deceased, it was found by a jury duly summoned, sworn and empanelled to try said issue, that neither of said paper-writings was the last will and testament of said Frances; and, thereupon judgment was rendered accordingly, from which judgment the said Cooke prayed an appeal to the next superior court of law for Wake County, which was granted, and the appeal-bond waived.

And your orator and oratrixes, further complaining, say that soon after said verdict and judgment in said court of pleas and quarter sessions, the said charitable institutions accepted said proposition of Thomas P. Devereux, and thereupon respectively executed and delivered to him a deed or instrument in writing purporting to assign,
14 convey, set over, and release to him all rights and interests which they had under either of said paper-writings, and empowering him to recover and collect the same to his own use.

That afterwards and during the pendency of said appeal, and just before the same was tried, the said William D. Cooke, the appel'ant, upon motion made in said superior court, obtained leave to withdraw from said suit altogether, and accordingly his name was stricken therefrom; and, thereupon the said Thomas P. Devereux, one of the executors named in said paper-writings, became a party to said suit, as executor and app'lant, in the place and stead of said Cooke.

That afterwards such proceedings were had in said superior court on said appeal, that at a special term of said court begun and held at the court-house in the city of Raleigh, within and for the county of Wake, on the third Monday of July, A. D. 1852, upon an issue whether either of said paper-writings was the last will and testament of said Frances Devereux, deceased, a verdict was obtained by the said Thomas P. Devereux that said paper-writing bearing earliest date was her last will and testament; whereupon it was ordered that a procedendo issue to said court of pleas and quarter sessions to admit to probate said last mentioned paper-writing, and to have duly qualified Thomas P. Devereux, the executor therein named.

That said Thomas P. Devereux never informed your oratrixes'
15 mother that he had employed said Haywood to act for them, and neither said Devereux nor said Haywood ever informed her as to said proceeding in the court of pleas and quarter sessions, or on said appeal, nor consulted her in reference thereto, and she remained in total ignorance thereof, except as she occasionally & accidentally received information from other sources.

That your oratrixes' mother being on a visit to North Carolina during the pendency of said appeal, and after the purchase of said legacies by said Devereux, sought an interview with said Haywood, which the said Haywood declined, alleging that he did not recognise her in the transaction, that he acted for her children, although the said Haywood well knew that she had no personal interest in the estate of said Francis Devereux, and much less any interest in conflict with the interest of her children. That on the same visit the said Devereux informed your oratrixes' mother, in answer to her inquiries, that it would be wholly immaterial to your oratrixes whether said paper-writings were admitted to

probate or not, as he intended in any event to carry out his mother's charitable designs; whereas in truth he had already purchased up the bulk of said charitable legacies, and he alone was mainly interested in sustaining said paper-writings or either of them.

That, as your orator and oratrixes are informed and believe, said appeal and the proceedings thereon were entirely under the control
16 of said Thomas P. Devereux; that said Haywood, so far as he acted at all in said proceedings, acted entirely under the direction and according to the wishes of said Devereux; and that your oratrixes were in fact wholly unrepresented in said proceedings; and that said proceedings were entirely irregular and fraudulent.

That the sole purpose of said Thomas P. Devereux, in conducting said proceedings and in purchasing said legacies, was to deprive your oratrixes of their just rights as next of kin of said Frances; that said charitable institutions received all that they were legally and justly entitled to, as the said Devereux well knew; and it was only by depriving your oratrixes of their just rights as aforesaid that said Devereux could derive any benefit from said purchase. And your orator and oratrixes are advised that said legacies will be deemed to have been paid off and extinguished for the benefit of the estate of said Frances, and that said Devereux will not be entitled to any benefit from the purchase of said legacies, except in common with your oratrixes.

And your orator and oratrixes further say that said Thomas P. Devereux, at the time of the transactions hereinbefore stated, stood in a relation of great confidence to your oratrixes and their mother; that he was their nearest male relative in North Carolina to whom they could look for advice and protection; that your oratrixes' mother knew him to be a lawyer of superior knowledge and skill, and placed implicit reliance upon whatever he told her; all of which the said Devereux well knew.

17 And your orator and oratrixes, further complaining, say that at a court of pleas and quarter sessions, begun and held at the court-house in the city of Raleigh, within and for the county of Wake, on the third Monday of November, A. D. 1852, the said paper-writing bearing earliest date having been previously admitted to probate and recorded in said court, in pursuance of the procedendo hereinbefore referred to, the said Thomas P. Devereux appeared in open court, by his attorney in fact, George W. Mordecai, and pretended to renounce his office of executor of the last will and testament of said Frances Devereux, deceased, whereupon one S. W. Whiting was appointed administrator of said Frances with the will annexed.

But your orator and oratrixes are informed and believe that said Thomas P. Devereux intermeddled with the assets of said deceased, both before and after his pretended renunciation, and had the entire and exclusive control and administration thereof; that he took possession of said assets immediately upon the decease of said Frances, retained them in his possession, disposed of them from time to time, and converted them to his own use, according to his will and pleasure; and especially that on or near the seventh of October, A. D. 1852, the said Thomas P. Devereux, before the appointment of Whiting as administrator, with the will annexed, caused certain slaves belonging to the estate of the said Frances Devereux, deceased, amounting to the number of fifty-seven, to be appraised and divided between the said Devereux and other persons; that said appraisal and division were made after the death of William H. Haywood, j'r, your oratrixes' pre-
18 tended guardian ad litem; and that the said Devereux has now in his possession, or in the possession of his attorney or agents,

the original paper or a copy thereof, containing the details of said appraisals and division; that said Whiting was appointed by the procurement of said Thomas P. Devereux, and as a mere form, the said Devereux becoming his bondsman; that he either never acted at all in the administration of said assets, or acted entirely under the direction of said Devereux; that said Whiting never returned any inventory, nor rendered any account of his administration, and is now deceased. That said Devereux's renunciation of his executorship, as your orator and oratrixes are informed and believe, was a contrivance on his part in order to avoid being called to account by your oratrixes; and that he procured said renunciation to be accepted by a concealment and suppression of the facts herein stated. And your orator and oratrixes are advised that said renunciation, as to them, is wholly void and of no effect.

And your orator and oratrixes further complaining says that John Devereux, hereinbefore referred to, the husband of said Frances Devereux, on the 1st day of July, 1844, departed this life, leaving the said Frances, his wife, him surviving, and leaving a large real and personal estate; that after his death a paper writing was found purporting to be his last will and testament, bearing date the 20th day of October, A. D. 1843, wherein the said Thomas P. Devereux and John Devereux, the son of said Thomas P. Devereux, were nominated and appointed his executors and residuary legatees; that said paper writing was afterwards duly proved and allowed as the last will and testament of said deceased, and said Thomas P. Devereux and his said son John took upon themselves the execution thereof; and the said Thomas possessed himself of the personal estate of said deceased, or the greater part thereof.

That said John Devereux made but a trifling provision in his will for the said Frances, his wife, although the bulk of his property had been acquired through her; that said Frances, feeling herself aggrieved by said will, dissented therefrom, and claimed her child's part of her husband's personal estate. That said executors, as your orator and oratrixes are informed and believe, set off and allotted to said Frances, as her child's part, a one-fourth part of the personal estate of which her said husband died possessed; whereas your orator and oratrix are advised that in consequence of large advancements made by the said John during his life to each of his children, the child's part of said Frances exceeded the entire value of the personal estate of which her said husband died possessed, and that she was accordingly entitled to the whole of said personal estate; all of which the said Thomas well knew.

And your orator and oratrixes further complaining say that they are informed and believe that said Frances Devereux, during her life, made large settlements upon her son, Thomas P. Devereux, and her daughter, Frances Ann Polk; and your orator and oratrixes are advised that said settlements or advancements are to be accounted for in ascertaining the share or portion of the estate of said Frances to which your oratrixes are entitled. And your orator and oratrixes are informed and believe that upon such accounting it would appear that your oratrixes, as representing their late father, are entitled to all the property which the said Frances left undisposed of, including said personal estate of her late husband, to which she was entitled.

And your orator and oratrixes further complaining say that your oratrixes, being entitled as aforesaid, have frequently, and in a friendly manner, by themselves and others, applied to the said Thomas P. Dev-

ereux, and requested him to come to an account with them for the real and personal estate and effects of their said grandmother, deceased, including the personal estate of her said husband, to which she was entitled as aforesaid, and to pay to them the clear residue thereof; and they well hoped that said Devereux would have complied with such their request, as in justice and equity he ought to have done.

But now so it is, may it please your honors, that the said Thomas P. Devereux absolutely refuses to comply with such your oratrixes' request, sometimes concluding that said Frances left barely sufficient property to pay her debts and legacies; at other times pretending that the property of said Frances, other than said sum of fifty thousand dollars, over which she had a power of appointment, was first to be applied to the payment of her debts and legacies, leaving said sum to lapse for
21 his benefit; at other times pretending that the whole, or nearly the whole, of said sum of fifty thousand dollars, and said annual sum of three thousand dollars, was paid to the said Frances, or according to her appointment, during her life; at other times pretending that he had a right to purchase, and did purchase, said charitable legacies for his own benefit, and that he has a right to receive out of the estate of the said Frances, on account of said legacies, twice the amount that he paid for the same; at other times pretending that said John Devereux, the elder, made no advancements to his children during his life, or, if he did, that they were not to be accounted for in ascertaining the child's part of said Frances; at other times pretending that the said Frances Devereux made no advancements during her life to himself and to said Frances Ann Polk, or, if she did, that said advancements are not to be accounted for in ascertaining the distributive share of your oratrixes in the estate of said Frances; at other times pretending that he never accepted the office of executor, nor intermeddled with the assets of said Frances, or, if he did, that his renunciation was nevertheless good and valid, and that he is not liable to be called to account by your oratrixes; whereas your orator and oratrixes expressly charge the contrary of each and every of said pretences to be true.

All of which actings, doings, and pretences of said defendant are contrary to equity and good conscience, and tend to the manifest wrong and injury of your oratrixes.

22 To the end, therefore, that the said defendants may, upon their several and respective oaths, according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, a full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully as if the same were here repealed, and they were particularly interrogated thereto; and more especially that the said Thomas P. Deverenx may, in manner aforesaid, answer and set forth whether a large part of said annual sum of three thousand dollars, and said gross sum of fifty thousand dollars, did not remain unpaid by the said defendant, either to the said Frances, or her appointees, at the time of her death, and what part and how much in particular of said sums so remained unpaid; and whether the said Frances, at the time of her decease, was not seized and possessed of a considerable amount of other property, real and personal, and how much in particular of each; and whether her personal property did not include a considerable number of negro slaves, and how many in particular, and of what else in particular it consisted; and whether her property was not much more than sufficient to pay all her debts and legacies, and how much more; and whether he did not make to your oratrixes' mother the several statements and representations hereinbefore set forth, or what

other statements and representations in that behalf, and at the
23 several times and upon the several occasions hereinbefore stated, or at what other times and on what other occasions; and whether he did not write to your oratrixes' mother at the time and to the effect hereinbefore stated, or at some other time and to a similar effect; and whether your oratrixes' mother did not answer his said letter to the effect hereinbefore stated, or to what other effect; and whether he did not profess to employ William H. Haywood, j'r, to act for your oratrixes as hereinbefore stated, or how otherwise; and whether in so doing he acted under any and what authority; and whether he did not give out and represent in the State of North Carolina, and to the persons and institutions interested under said paper-writings as legatees, that he took no part in contesting the probate of said paper-writings, and that the probate of said paper-writings was to be contested by your oratrixes alone; and whether he did not enter into negotiations to purchase said legacies at the time and in the manner hereinbefore stated, or how otherwise; and whether the said William H. Haywood, j'r, did not act as his attorney and counsel in such negotiations, and as such conduct the correspondence between the said Devereux and the said legatees, or how otherwise; and whether said Haywood did not, as such attorney and counsel, make a proposition to said legatees, to the effect hereinbefore stated, or how otherwise; and whether said Devereux ever informed your oratrixes' mother that he had employed said Haywood to act for your ora-
24 trixes, or ever informed her as to said proceedings in said court of pleas and quarter sessions, or on said appeal, or ever consulted her in reference thereto, and, if so, when and how; and whether the said Devereux, both before and after his pretended renunciation of his executorship, did not intermeddle with the assets which were of said Frances, and control and administer the same in the manner and to the extent hereinbefore stated, or in some other and what manner, and to some other and what extent; and whether said Whiting ever acted in the administration of said assets, and, if so, to what extent; whether he ever filed an inventory or rendered an account; what assets, if any, ever came into his hands, and how he disposed of the same; and whether he was not one of the executors of said John Devereux, the elder, and as such did not possess himself of the personal estate of said John, or the greater or some part thereof, and what part and how much in particular; and whether the said John Devereux did not make large advancements to his children during his life, and to what amount in particular, and whether said advancements were accounted for in ascertaining the child's part of said Frances, and, if not, why not; and whether said Frances Devereux did not, during her life, make large advancements to said Thomas P. Devereux and to the said Frances Ann Polk, and to what amount in particular.

And that the said defendant may set forth a full, true, and just inventory and account of all and singular the goods, chattels, real and
25 personal estate and effects whatsoever, which the said Frances Devereux was seized or possessed of, interested in, or entitled to at the time of her death, and all the particulars whereof the same consisted, including said sum of fifty thousand dollars, said annual sum of three thousand dollars, and the personal estate of said John Devereux, to which said Frances was entitled, and the quantities, qualities, full, real, and true values of all and every such particulars; and whether all or some, and which of such particulars have not, and when, been possessed or received by or come to the hands of him, the said defendant, or of some and what person by his order or for his use; and how and in

what manner, and when and where, and by and to whom, and for how much, the same and every or any, and what parts or part thereof have or hath been sold or disposed of; and whether any and what parts thereof, and to what value and amount now remain undisposed of, and what has become thereof; and also a particular account of all and every the debts whatsoever which were justly due and owing from the said Frances Devereux at the time of her death, and to whom and for what and on what securities, if any, the same were respectively due; and whether any and what sums of money have been since paid in or towards the discharge of all or any, and which of the said debts; and when and by whom, and to whom and for what; and whether any, and what
26 sums or sum of money do or doth now remain unpaid on account thereof; and whether the said defendant hath not in his possession or power divers or some and what books, accounts, books of accounts, letters, copies of letters, and extracts of letters, memoranda, and writings relating to the matters hereinbefore mentioned, or some or one and which of them; and that he may set forth a list or schedule thereof, and may produce the same according to the rules and practice of this court; and whether the said defendant hath now in his possession or power all such of the aforesaid particulars as at any time have or hath been in his possession or power, and, if not, then that he may set forth what has become thereof, and in whose possession or power the same were when he last saw or heard of them respectively.

And that an account may be taken of the real and personal estate and effects of the said Frances Devereux, possessed by or come to the hands of the said defendant, or to the hands of any other person or persons, by his order, or to his use, or which, but for his wilful default or neglect, might have been possessed or received by him, including said sum of fifty thousand dollars, and said annual sum of three thousand dollars, and the personal estate of said John Devereux, to which the said Frances was entitled; and also an account of the said Frances' funeral expenses, debts and legacies; and that the said Frances' real and personal estate may be applied to the payment thereof in a due
27 course of administration. And that the residue and clear surplus thereof may be ascertained, and your oratrixes' just share and proportion thereof decreed to be paid to them.

And that your oratrixes may have such further or other relief in the premises as the nature and circumstances of their case may require and to your honors shall seem just.

May it please your honors to grant unto your orator and oratrixes a writ of subpœna, to be directed to the said Thomas P. Devereux, Leonidas Polk, and Frances Ann Polk, his wife, commanding them, and each of them, by a certain day, and under a certain penalty therein to be inserted, to be and appear before your honors in said court, and then and there to answer the premises, and further, to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orators, as in duty bound, shall ever pray, &c.

FRANK G. Q. UMSTED.
ELIZABETH J. DEVEREUX UMSTED.
GEORGINA P. DEVEREUX.

Affidavit of F. G. Q. Umsted to O. B.

UNITED STATES OF AMERICA,
Southern District of New York, City of New York, ss:

On this twenty-third day of March, A. D. 1859, before me personally

appeared Frank G. Q. Umsted, of the city of New York, one of the plaintiffs in the foregoing bill in equity, and who has signed the same, and he being by me duly sworn, did depose and say that he has
28 read the said bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and that as to those matters he verily believed it to be true.

[SEAL.] R. E. STILLWELL,
United States Commissioner, duly commissioned and sworn, and dwelling in the city and district aforesaid.

Affidavit of Eliz. J. D. Umsted to O. B.

UNITED STATES OF AMERICA,
Southern District of New York, City of New York, ss:

On this twenty-third day of March, A. D. 1859, before me personally appeared Elizabeth J. Devereux Umsted, of the city of New York, one of the plaintiffs in the foregoing bill in equity, and who has signed the same, and she being by me duly sworn, did depose and say that she has read the said bill and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters which are therein stated on her information and belief, and that as to those matters she verily believed it to be true.

[SEAL.] R. E. STILLWELL,
United States Commissioner, duly commissioned and sworn, and dwelling in the city and district aforesaid.

Affidavit of G. P. Devereux to O. B.

UNITED STATES OF AMERICA,
Southern District of New York, City of New York, ss:

29 On this 23rd day of March, A. D. 1859, before me personally appeared Georgina P. Devereux, of the town of Stratford, in the State of Connecticut, one of the plaintiffs in the foregoing bill in equity, and who has signed the same, and she being by me duly sworn, did depose and say that she has read the said bill and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters which are therein stated on her information and belief, and that as to those matters she verily believed it to be true.

[SEAL.] R. E. STILLWELL,
United States Commissioner, duly commissioned and sworn, and dwelling in the city and district aforesaid.

C. C. cl'k's certificate as to official capacity of R. E. Stillwell, com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that I am well acquainted with the handwriting of R. E. Stillwell, whose name is subscribed to the annexed jurats, and that the signature to the same is in his proper handwriting.

And I do further certify that he was, at the time of signing the same, a United States commissioner, duly appointed by the circuit court of the United States of America, for the southern district of New York, second circuit.

In testimony whereof, I have hereunto subscribed my name,
30 and affixed the seal of the said circuit court, this 23rd day of March, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of these United States the eighty-third.

[SEAL] KENNETH G. WHITE,
Clerk.

Exhibit A, with original bill.

Deed from John and Frances Devereux, his wife, to Thomas P. Devereux and his heirs, July 3rd, A. D. 1839.

This indenture, made the third day of July, in the year of our Lord one thousand eight hundred and thirty-nine, between John Devereux, esq., of the county of Wake, and Frances Devereux (formerly Pollok), his wife, of the one part, and Thomas P. Devereux, of the same county (son of the said John and Frances), of the other part, witnesseth:

That whereas George Pollok, esq., late brother of the said Frances, hath recently departed this life, intestate, unmarried, and without issue, leaving the said Frances and the children of a deceased half-sister, on the part of his mother, his heirs at law, and was seized in fee-simple, at the time of his death, of divers messuages, tracts, lots, and parcels of land, situate in the counties of Orange, Halifax, Northampton, Martin, Bertie, Craven, Jones, and elsewhere in the State of North Carolina, of which lands some had been transmitted by descent, and derived by gift, devise, or settlement to the said George from his paternal ancestors, and have now, by his death, descended upon the said Frances, as the sole heiress of the said George, on the part of his father; and others
31 of the said lands were purchased by the said George during his life, and now, by his death, have descended upon the said Frances, and the said children of said deceased sister, as tenants in common; the said Frances entitled to one*e* undivided moiety, and the said children, as representing their mother, together entitled to the other undivided moiety thereof; and whereas the said John and Frances are minded to settle and assure all the said lands and real estate, which have so accrued to the said Frances, in the manner, and to and for the uses, trusts, and purposes hereinafter expressed and declared:

Now, therefore, in consideration of the premises, and of one dollar by the said Thomas, to the said John and Frances, in hand paid, and for divers other good causes and considerations, they, the said John Devereux and Frances, his wife, have given, granted, bargained, and sold, and do by these presents give, grant, bargain, and sell, unto the said Thomas P. Devereux, and his heirs, all the said messuages, tracts, lots, and parcels of lands situate in the counties above named, or elsewhere, which, on the death of the said George Pollok, descended upon the said Frances, as his only heiress on the part of his father, and also all the moiety, share, and portion of the said Frances in, of, and to all the said messuages, tracts, lots, and parcels of land situate in the said counties, or elsewhere, which have descended upon the said Frances and the said children of the said deceased sister of the said George, as tenants in common, together with all the right, title, interest, property, and estate of them, the said John and Frances, and each of them, of, in, and
32 to the same, and all other the land and real estate, wheresoever situate, which were of the said George Pollok at his death, to have and to hold the same, with the appurtenances, unto him the said Thomas

P. Devereux, his heirs and assigns forever, upon and subject, nevertheless, to the following charges, uses, trusts, restrictions, directions, provisions, and limitations, that is to say:

First. That the said Thomas P. Devereux, his heirs and assigns, shall, on the first day of March in each and every year during the life of the said Frances Devereux, pay to the said Frances, into her own hands, or according to her own order, and to her sole and separate use, and subject to her own disposal, as if she were a feme sole and unmarried, the yearly sum of three thousand dollars.

Secondly. That the said Thomas, his heirs or assigns, shall pay to the said John Devereux the sum of ten thousand dollars, one moiety of which to be paid on the first day of March, A. D. 1841, and the other moiety one year thereafter; but it is understood that should the said John receive from the said Thomas, as administrator of the said George Pollok, any of the effects which were of the said intestate, then the price thereof shall be deemed and taken in payment, or part payment, of the said sum of ten thousand dollars.

Thirdly. That the said Thomas P. Devereux, his heirs or assigns, shall invest for, or pay to, the said Frances, at such times, in such proportions, and in such manner and form as she shall direct and
33 require, to and for her own sole and separate use, and subject to her own disposal by will, deed, or writings in nature thereof, or otherwise, to all intents and purposes (notwithstanding her coverture) as if she were a feme sole and unmarried, the sum of fifty thousand dollars; but if the said sum of money, or any part thereof, shall remain unpaid, or shall not be invested during her life, and if the said Frances shall not by deed, or will, or writing in nature thereof, or by some other act give, grant, dispose, or direct any payment, investment, or application of the same, then the said sum of money, or so much thereof as shall remain not paid, given, granted, disposed, or directed to be invested, paid, or applied, shall be considered as lapsing, and the charge therefor as extinguished for the benefit of the said Thomas.

Fourthly. That the said Thomas P. Devereux, his heirs or assigns, shall pay to Elizabeth Devereux and Georgina Devereux, infant children of the late George P. Devereux (son of the said John and Frances by his wife Sarah Elizabeth), each the sum of eleven thousand dollars, to be paid to them respectively on attaining full age, or marriage, with interest thereon, after the first day of March, A. D. 1842, as follows, that is to say, for five years thereafter, at the rate of three per centum per annum, and then afterwards at the usual rate of six per centum per annum, payable on the first day of March in each and every year; and should one of the said children die unmarried and within
34 age, then one moiety, or half part of the said sum of money, so directed to be raised for her, shall be paid to the said Sarah Elizabeth, her mother, for her own use, if she shall be living at the death of such child, and the other moiety or half part shall lapse, and the charge thereof be extinguished for the benefit of the said Thomas; and in like manner, should the other of the said children die unmarried and within age, one moiety or half part of her portion shall be paid to the said Sarah Elizabeth (if then living) for her own use, and the residue thereof shall lapse, and the charge be extinguished for the benefit of the said Thomas; and should the event on which the said Sarah Elizabeth will become entitled to the moieties of the said sum, or either of them, happen after the first day of March, A. D. 1842, then the same shall be payable to her immediately (if before) then on that day. But should it happen that at the death, unmarried and within age, of both or either of the

said children, their mother shall not be alive, so as to take moiety of the portion or portions of such child or children, the whole thereof shall lapse and the charge be extinguished for the benefit of the said Thomas.

And it is hereby declared that the said Thomas, his heirs or assigns, may, at his or their discretion, anticipate the times for paying the said two sums of money, and may, before the sums or either of them shall become due and payable, pay the whole, or any part thereof, to any person by law authorized to receive the same on behalf of the
35 said children of either of them, and as the said John and Frances have entire confidence in the said Sarah Elizabeth, it is hereby expressly declared that she may receive and the said Thomas may make to her any payment on account of her said children or either of them, and her receipts for any such payments, whether of principal or interest, shall be a full acquittance of the said Thomas.

Fifthly. That whereas the said Sarah Elizabeth, as the personal representative of her late husband, is indebted to Collin Clarke in the sum of six thousand dollars, the said Thomas is immediately to assume upon himself the said debt, to release her therefrom, and to pay the same.

Sixthly. That the said Thomas P. Devereux, his heirs and assigns, shall pay to Frances Ann Polk, wife of the Right Reverend Leonidas Polk, and daughter of the said John and Frances, the sum of fifty thousand dollars ($50,000), to be paid in equal annual instalments of five thousand dollars, the first payment to be made on the first day of March (A. D. 1842), one thousand eight hundred and forty-two, and the said Thomas shall be charged with interest on the said sum of fifty thousand dollars, and such portions thereof as may from time to time remain unpaid, as follows; that is to say, for five years from and after the first day of March, A. D. 1842, at the rate of three per centum per annum, and thenceforward at the usual rate of six per centum
36 per annum; provided always that the said Thomas P. Devereux may, at his discretion, pay and discharge the said sum of money, or any part thereof, or any instalment or part thereof, from time to time, and at any time before the same shall become payable; and provided also, and it is hereby declared and directed, that one moiety or half part of the said sum of fifty thousand dollars shall be paid into the proper hands of the said Frances Ann Polk, or otherwise be vested, held, or disposed of, to, and for the sole and separate use of the said Frances Ann, without being in any manner subject to any charge, release, assignment, or control of her present or any future husband, nor to pass to nor vest in the personal representative of such husband, but to be in all respects subject to her order or disposal, and to pass at her death (if then undisposed of) as if she were a feme-sole and unmarried. And provided further, and it is hereby directed, that should the said Leonidas and Frances Ann at any time on or before the first day of March, A. D. 1841, elect to take lands instead of the said sum of fifty thousand dollars, and also to take negroes instead of a like sum directed to be raised for the said Frances Ann by deed (bearing even date with these presents, from the said John Devereux to the said Thomas P. Devereux, as will appear by reference thereto), and notify the said Thomas of such election to take lands and slaves instead of the said two sums of money; or should the said Thomas, on or before the said first day of March, A. D. 1841, elect, and notify the said
37 Leonidas and Frances Ann of his election, to give lands and slaves instead of the said two sums of money, then on the first day of January, A. D. 1842, there shall be allotted for the said Frances

Ann Polk, in fee-simple, a share or portion of the lands, hereby conveyed and assured, of the full value of fifty thousand dollars, and the legal title of the same shall be made to or for the said Frances Ann, and the charge for the said money shall thereby cease and determine; and of the land so allotted or conveyed for the said Frances Ann, one moiety in value shall be properly assured to her sole and separate use and subject to her own disposal, as if she were a feme-sole and unmarried, free from all control or interest of her present or any future husband.

Seventhly. That, should the personal estate of the said George Pollok prove insufficient to pay and satisfy all his just debts, and by reason thereof there should remain any debt or debts of the said George Pollok properly chargeable on his real estate, the said Thomas shall pay and satisfy the proportion thereof which ought justly to be borne by the lands descended to the said Frances Devereux, and hereby conveyed to the said Thomas.

And the said John and Frances Devereux do hereby declare all the foregoing sums of money, payments, and duties directed to be paid and discharged to be express charges and liens upon the real estate hereby assured, and subject thereto, and of the performance and satis-
38 faction thereof, they, the said John and Frances Devereux, do hereby declare that he, the said Thomas, his heirs and assigns, shall hold all the lands and real estate hereinbefore described and granted, upon and to the uses, trusts, and purposes following; that is to say:

Upon trust, for his own use and benefit during his natural life, and no longer; and from and after his death upon trust for the payment and satisfaction, and to stand charged with the payment and satisfaction of all and every the just debts which the said Thomas may owe at the time of his death, and subject thereto upon trust for any one or more of the children (born or to be born) of the said Thomas, their wives or husbands, for such estates, upon such trusts, to such uses, and subject to such charges, conditions, and restrictions as he, the said Thomas, shall, by deed or will, direct, limit, and appoint; and should the said Thomas make an appointment to, or in favor of more than one of his children, sons-in-law, or daughters-in-law, it is hereby declared that they shall take in such proportions in all respects as he shall declare, and that no disproportion of value shall be deemed or taken (however great such disproportion may be) to make the said appointment illusory, or in any manner to defeat the same, but that his power shall be absolute and without restriction to appoint the whole to one in exclusion of the residue, to some in exclusion of the residue, or to
39 all; and if to more than one, or to all, then with such difference as he may please to make between them, though to some he should appoint a mere nominal sum or value; and in default, or for want of any such appointment, then upon trust for the children of the said Thomas, who shall survive him, and their heirs, share and share alike, in fee-simple.

And should any child of the said Thomas die during the life of the said Thomas, leaving issue which shall survive the said Thomas, such issue shall stand in the place of such child, and take the portion or share that would by such child have been taken upon his or her surviving the said Thomas.

And it is further declared that the issue of any child of the said Thomas shall (after the death of such child) be deemed and taken, to

all intents and purposes, to be within the power of appointment above given to the said Thomas.

And whereas it will be necessary to make partition of the said lands and real estate held in common as above stated, and whereas it may be beneficial to both the parties to the said partition to make exchanges by assigning lands which descended upon the said Frances solely, to the said children of the said deceased sister of the said Pollok, and to receive instead thereof lands so held in common, and to make other arrangements (which cannot be foreseen and specified) in order to give, as far as possible, to the parties to the said partition, respectively, allotments
40 of land compact and convenient, it is therefore hereby declared and provided that the said Thomas P. Devereux (with the assent of the said John and Frances during their lives, and absolutely, and at his sole will and discretion, after their deaths) shall have full power to make such partition, in such manner as he may deem most suitable, proper, and convenient, to exchange lands of which the said Frances is sole seized for lands held in common as aforesaid, and in all other respects to settle and arrange the said partition as he shall deem best; and what he shall so do, settle, and arrange shall be absolutely and to all purposes binding, as if he were the owner of the whole in fee-simple, without being subject to any trust, use, or charge whatever; but he shall hold any lands which he may acquire by such exchanges or other arrangements upon the trusts hereinbefore declared.

And it is further declared that the said Thomas, his heirs and assigns, shall have power, in order to raise any of the sums of money herein directed to be paid, to sell any parts or portions of the lands hereby granted.

And whereas circumstances which cannot be foreseen and expressly provided for may make it expedient that the said lands and real estate (after all the above charges have been paid, satisfied, and extinguished) should be charged with debts, or be exchanged, sold, and disposed of, and the proceeds otherwise invested upon the trusts aforesaid;
41 therefore, it is expressly declared that the said Thomas P. Devereux shall have ample and full power and authority, from time to time, and at all time, at his own will and pleasure, by any proper deeds or assurances, to charge with the payment of any just debt or debts of the said Thomas, or to grant, sell, and exchange all or any part of the said lands and real estate, and to invest the proceeds of such sale or sales in other funds, real or personal, he, the said Thomas, holding any lands which he may acquire by exchange, and any funds, real or personal, in which he may make any such investment, upon the trusts and with the power herein declared touching the lands which he may so grant, sell, or exchange, and any and every such grant, sale, exchange, and disposition shall pass the title discharged of any use or trust hereby declared for the any family of the said Thomas.

In witness whereof the said John Devereux, and Frances, his wife, and the said Thomas P. Devereux, have hereunto set their hands and seals the day and year first above written.

JOHN DEVEREUX. [SEAL.]
FRANCES DEVEREUX. [SEAL.]
T. P. DEVEREUX. [SEAL.]

Signed, sealed, and delivered (erasures and interlineations first made) in presence of—

GEORGE E. BADGER.

Probate of deed.

STATE OF NORTH CAROLINA, *ss:*

42 Be it remembered that this day, at the city of Raleigh, before me, William Gaston, one of the judges of the supreme court, personally appeared John Devereux and Frances Devereux, his wife, the grantors in the foregoing deed of conveyance from them to Thomas P. Devereux, and acknowledged the due and legal execution thereof as their act and deed for the purposes therein declared.

And the said Frances Devereux, being thereupon privately examined by me, separate and apart from her said husband, touching her free consent in executing the said conveyance, she, on such examination, declared that she had executed the same freely, and of her own will and accord, without any force, fear, threats, or other undue influence of her said husband, or any other person, and did still voluntarily assent thereto.

And the said Thomas P. Devereux also, on the same day and at the same place, before me, acknowledged the execution by him of the said deed of conveyance.

Let it be registered, July 3rd, 1839.

WILLIAM GASTON.

Certificate of registration of deed.

This deed was registered March 9th, 1848.

SAMUEL CALVERT, *P. R.*,
Jackson, Northampton County, North Carolina.

Exhibit B with original bill.

Frances Devereux's will, dated 23rd day of December, A. D. 1847.

In the name of God, amen: I, Frances Devereux, in the State
43 of North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby to execute all powers vested in me and enacted in any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself.

And I would here declare that my only hope of a glorious resurrection is in the atonement made for sin by my Saviour Jesus Christ, and acknowledge my best works are utterly unworthy of acceptance further than as proof of my faith, I cast them from me, and cling to the righteousness of my Saviour as my plea at the bar of Him who searcheth the heart.

As it has pleased God to bestow a competence on my descendants, and as my prayer has ever been that they might be saved from the temptations which accompany wealth, I feel at liberty to aid in extending the kingdom of Him who hath redeemed my soul from the lowest pit of destruction and assist those engaged in enlightening the ignorant.

ITEM 1ST. I give and bequeath to the trustees of the Caldwell Insti-
44 tute, and to their successors and assigns (the said Caldwell Institute being at present located in the town of Hillsboro', Orange County, North Carolina, and having been incorporated by the

legislature of North Carolina), the sum of four thousand dollars, which sum shall remain in the hands of Thomas P. Devereux for five years from the time of my death, he paying the interest accruing, annually or semi-annually, as required during that period. The interest alone of said sum to be applied in payment of the salaries of the professors or instructors in said institute wherever it may be located, provided it be within the said State of North Carolina.

ITEM 2ND. I give and bequeath to Clement C. Read, of the county of Prince Edward, in the State of Virginia, and his executors, administrators, and assigns, the sum of four thousand dollars, in trust, for the benefit of the Union Theological Seminary, located in said county of Prince Edward, to be paid over by him to the order of such persons as may compose the board of directors of said seminary whenever the sum shall be received by him, which sum shall be appropriated to the endowment of an addit onal professorship in said seminary. And until said endowment be completed, the interest annually arising from said sum shall be added to the principal, or else applied to aid in the payment of the salary of any professor or instructor not already adequately provided for.

45 ITEM 3RD. I give and bequeath to the trustees of the board of education of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of four thousand dollars, to be applied by said board to the education of indigent pious young men for the gospel ministry; but of the principal of this sum only five hundred dollars shall be used in any one year.

ITEM 4TH. I give and bequeath to my executors and the survivors of them, and the executors, administrators, and assigns of the survivors of them, the sum of four thousand dollars, in trust, to pay over the same to the person who, when the same shall be payable, shall act as treasurer of the Board of Foreign Missions of the Presbyterian Church in the United States of America, to be applied to the uses and purposes of said board, and under its direction; and the receipt of said treasurer shall be a full receipt and acquittance of my said executors for the same. But of the principal of this sum only one thousand dollars shall be used in any one year.

ITEM 5TH. I give and bequeath to the trustees of the Board of Missions of the General Assembly of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of four thousand dollars, to be held by the said trustees and their successors forever, to and for the uses, and under the direction of the said board of missions of the said general assembly, according to the provisions

46 of their charter, to be appropriated to domestic missions, and only one thousand dollars of the principal to be used in any one year for that purpose.

ITEM 6TH. I give and bequeath to my executors and the survivors of them the sum of five hundred dollars, in trust, for the benefit of the Raleigh Female Benevolent Society, which sum shall be loaned out, or vested in some productive stock, and the proceeds thereof alone applied annually or semi-annually in the payment of the salary of the teacher of the school, under the care of said benevolent society, provided the said society shall raise a sum annually, which, added to the proceeds of the above five hundred dollars, shall be sufficient to support a teacher; or, if said society should cease to exist, then the proceeds of the above five hundred dollars shall be applied to the payment of a colporteur, to supply religious publications in some destitute part of North Carolina.

ITEM 7TH. It is my will that all my negroes, who at the time of my death shall be in the possession of my grandson, John Devereux, in Bertie County, shall be kept together after my death until they have secured the crop on the ground at that period; at the expiration of that time, my highly-esteemed son-in-law, Right Reverend Leonidas Polk, is to select as many families of said negroes as he wishes; these he
47 is to take at a valuation, giving bonds for the same, payable in ten equal annual instalments; but as I know he is at a great expense to promote the spiritual improvement of his slaves, I desire the expense attending their removal to be paid by my estate. Should John Devereux take any of said negroes, the same terms will be required as in the case of said Leonidas Polk.

ITEM 8TH. I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs, and assigns, the sum of seven thousand five hundred dollars, in trust, for the following purposes:

First, to Miss Louisa Taylor, daughter of M'r's Eliza Taylor, fifty dollars, annually, during her natural life.

Secondly, to Miss Ellen Anderson, who was brought up by my friend M'r's Mary Jones, the sum of fifty dollars per annum during her natural life.

Thirdly. To M'r's Elizabeth Kunis, now residing in the town of Newbern, in the State of North Carolina, an annuity of fifty dollars, to be paid annually to Thomas Sparrow, esqr., of the said town of Newbern, for the benefit of said Elizabeth Kunis, during her natural life.

Fourthly. To two girls at the mission school in Ceylon, who bear the names of Catharine Ann Devereux and Frances Ann Polk, forty dollars per annum, to be paid annually to the secretary of the American Board of Commissioners for Foreign Missions, for their support at the said mission school.

Fifthly. To the Reverend Theron Baldwin, corresponding secretary of the Society for Promoting Collegiate and Theological Education at the West, or to his successors in office, one hundred and twenty dol-
48 lars per annum, to be applied by him in the cause of female education in the West, or valley of the Mississippi, the object being to prepare pious Protestant females for teachers in that part of our country.

Sixthly. To Thomas P. Devereux, one hundred and forty dollars per annum, to aid in supporting a teacher (should he think fit to employ one) to give religious instructions to the slaves on the Roanoke River, particularly those in the possession of my descendants.

ITEM 9TH.—It is my will that the house and lot in Chapel Hill, purchased of Sidney Barber, be disposed of as my executors may deem best. If sold upon credit, a mortgage must be taken upon the property until payment is made, which payment is to be vested in some productive stock.

ITEM 10TH.—From the funds arising from the sale of the above slaves, and the house and lot in Chapel Hill, it is my will that at the death of M'r's Eliza Taylor, her daughter Louisa shall receive the further sum of one hundred and fifty dollars, annually, during her natural life; or should the said Eliza Taylor, by any providential visitation be rendered incapable of teaching school, or arrive at the age of sixty years, then, in either of these contingencies, the said Louisa Taylor shall receive the above-mentioned sum of one hundred and fifty dollars per annum during her natural life, over and above the sum of fifty dollars per annum
49 heretofore provided for her; the same to be paid the said Louisa Taylor by my executors, annually.

ITEM 11TH.—I give and bequeath to Jesse Brown, George Simpson, Seymour W. Whiting, and William J. Clarke, trustees of the Presbyterian church or society, in the city of Raleigh, or their successors in office, five negroes, viz: Tom, Viney, Priscilla, and her sons, George and Henry, with their increase, in trust, to be used or employed by the pastor of said church as he may direct. But should said church or congregation, in process of time, fail to adhere to the doctrine, order, and form of church government set forth in the confession of faith of the Presbyterian Church in the United States of America, then, and in that case, I direct that the said negroes and their increase shall return to my executors to be distributed according to law; and further, it is my will that if the said church or congregation shall at any time fail to raise annually, as the salary of the pastor or minister, the sum of six hundred and fifty dollars, exclusive of the avails of said negroes given for the benefit of the pastor, then, and in that case, the bequest of said negroes shall be void, and the said negroes, with their increase, shall return to my executors and be distributed according to law. It is my will that the said negroes, if hired out, should have a choice of masters, subject to the approval of the pastor of the church, and that they should not be publicly hired out.

50 ITEM 12TH.—I give and bequeath to S. S. Souter, of the borough of Norfolk and State of Virginia, to his executors, administrators, and assigns, the sum of five hundred dollars, in trust nevertheless, for the association known by the name of the Seaman's Friend Society, of said borough, the said sum of five hundred dollars to be disposed of so as to promote the welfare of that society. In case the above sum shall be given to said society before my death, then this bequest to be void.

ITEM 13TH.—I give and bequeath to Elizabeth Lacy, daughter of the Rev. Drury Lacy, at present residing in the city of Raleigh, a servant girl named Sarah, the daughter of Priscilla, now about seven years old, the said Sarah to remain with her mother until she is a proper age to be taken from her.

ITEM 14TH.—In consideration of the faithful services of my female servant Evelina, it is my will that, at my death, she shall be sold to such a person as she may choose for her master, and that my executors shall make and execute a good and sufficient title to the said Evelina to such person, upon his executing a bond with good and sufficient security, conditioned to pay and expend the sum of fifty dollars annually for the period of four years, which is to be expended in employing some suitable person to distribute tracts and religious books in the most destitute portions of the counties Nash, Wayne, and Johnston; and, if the

51 said person selected shall fail to perform the consideration of the bond before mentioned, then the sale to be void, and the servant girl, Evelina, is to make a second choice, and so on, until the same shall be affected and my wishes complied with.

ITEM 15TH.—It is my wish that my servant girls, Rebecca, Delia, and Sally, shall be sold to some person or persons residing within the limits of the State of North Carolina, and that the said servants shall not be sold at public sale, but at private sale (and only to those who intend to retain them as domestics), the price to be fixed by some discreet person or persons, my object being that they shall have masters who will [illegible] them properly and not take them out of the State.

ITEM 16TH.—Should my debts, at my decease, not exceed two thousand dollars, I give my carriage and horses to my beloved son, Thomas P. Devereux; if otherwise, it is my will and desire that my executors should sell all the stock of horses, cattle, hogs, &c., crops, and farming

utensils, and any personal property I may have in the possession of my grandson, John Devereux (negroes excepted), also my carriage and wagon, or any other property of the same description, and pay all my debts; and should the said property be found insufficient to pay the debts, then it is my will and desire that the negroes, which may be in the possession of my grandson, John Devereux, at the time of my death, shall be hired out, and the proceeds applied to the payment of
52 the balance, until the same shall be fully paid and satisfied, unless my grandson and son-in-law should arrange the payment of the same in some other manner, and take the negroes into their possession.

Should it appear, at my decease, that the bequests exceed the amount of funds left, my will is that the first five only shall be curtailed, until brought within the limits of the assets.

It is my further will and desire, and I do so direct and appoint, that if any one or more of the legacies hereinbefore given, or intended to be given by me, should fail to take effect through any informality, or from any other cause, that then the sum so failing shall be added to and form a part of the other legacies, which shall be lawful and valid.

I do hereby constitute and appoint Frederick Nash, senior, Thomas P. Devereux, John Primrose, and William D. Cooke my lawful executors to execute this my last will and testament, according to the true intents of the same; and having full confidence in the integrity and fidelity of my executors, I desire that they may be exempted from the necessity of giving security for the execution of the duties and trusts hereby to them committed.

In witness of all of which, I, the said Frances Devereux, do hereunto set my hand and seal this twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-seven, praying that Almighty God, in His good providence and great mercy,
53 would so overrule, and direct, and care for the several bequests herein made that thereby His own glory and the good of His church may be promoted.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, published, and declared by the said Frances Devereux to be her last will and testament, in the presence of us, and in pres ence of each other do, at her request, subscribe our names as witnesses thereto.

D. Du Pre.
George Simpson.

Exhibit C with original bill.

Frances Devereux's will, dated the 20th day of August, A. D. 1848.

In the name of God, amen, I, Frances Devereux, in the State of North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby also to execute all powers vested in me and enacted in any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself.

54 And I would hereby declare that my only hope of a glorious resurrection is in the atonement made for sin by my Saviour, Jesus Christ, and acknowledge my best works are utterly unworthy of acceptance farther than as proofs of my faith. I cast them from me, and cling to the righteousness of my Saviour as my plea at the bar of Him who searcheth the heart.

As it has pleased God to bestow a competence on my descendants, and as my prayer has ever been that they may be saved from the temptations which accompany wealth, I feel at liberty to aid in extending the kingdom of Him who hath redeemed my soul from the lowest pit of destruction, and assist those engaged in enlightening the ignorant.

ITEM 1ST.—I give and bequeath to the trustees of the Caldwell Institute, and to their successors and assigns (the said Caldwell Institute being at present located in the town of Hillsboro', Orange County, North Carolina), the sum of two thousand dollars, which sum shall remain in the hands of Thomas P. Devereux for five years from the time of my death, he paying the interest accruing annually or semi-annually, as required during that period, the interest alone of that sum to be applied to the payment of the salaries of the professors or instructors of said institute, wherever it may be located, provided it be within the State of North Carolina.

ITEM 2ND.—I give and bequeath to Clement C. Read, of the
55 county of Prince Edward, in the State of Virginia, and his executors, administrators, and assigns, the sum of two thousand dollars in trust, for the benefit of the Union Theological Seminary, located in said county of Prince Edward, to be paid over by him to the order of such persons as may compose the board of directors of said seminary, whenever the sum shall be received by him, which sum shall be appropriated to the endowment of an additional professorship in said seminary, and until said endowment be completed, the interest annually arising from said sum shall be added to the principal, or else applied to aid in the payment of the salary of any professor or instructor not already adequately provided for.

ITEM 3RD.—I give and bequeath to the trustees of the Board of Education of the Presbyterian Church of the United States of America, and to their successors and assigns, the sum of two thousand dollars, to be applied by said board to the education of indigent pious young men for the gospel ministry; but of the principal of the sum, five hundred dollars only shall be used in any one year.

ITEM 4TH.—I give and bequeath to my executors and the survivors of them, and the executors, administrators, and assigns of the survivors of them, the sum of two thousand dollars in trust, to pay over the same to the person who, when the same shall be payable, shall act as treasurer of the Board of Foreign Missions of the Presbyterian
56 Church in the United States of America, to be applied to the uses and purposes of said board, and under its direction, and the receipt of said treasurer shall be a full receipt and acquittance of my said executors for the same. But of the principal of this sum only five hundred dollars shall be so used in any one year.

ITEM 5TH.—I give and bequeath to the trustees of the Board of Missions of the General Assembly of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of two thousand dollars, to be held by said trustees and their successors forever, to and for the uses and under the direction of said board of missions of the said general assembly, according to the provisions of their charter, to be appropriated to domestic missions; and only

five hundred dollars of the principal to be used in any one year for that purpose.

ITEM 6TH.—I give and bequeath to my executors and the survivors of them, the sum of five hundred dollars, in trust, for the benefit of the Raleigh Female Benevolent Society, which sum shall be loaned out or vested in some productive stock, and the proceeds thereof alone applied annually or semi-annually in the payment of the salary of the teacher of the school under the care of said benevolent society, provided
57 the said society shall raise a sum annually which, added to the proceeds of the above five hundred dollars, shall be sufficient to support a teacher; or, if said society should cease to exist, then the proceeds of said five hundred dollars shall be applied to the payment of a colporteur, to supply religious publications in some destitute part of North Carolina.

ITEM 7TH.—It is my will that all my negroes who, at the time of my death, shall be in the possession of my grandson, John Devereux, in Bertie County, shall be kept together after my death until they have secured the crop on the ground at that period. At the expiration of that time, my highly-esteemed son-in-law, Right Reverend Leonidas Polk, is to select as many families of said negroes as he wishes; this he is to take at a fair valuation, giving bonds for the same, payable in ten annual installments; the remainder of these negroes to be offered to my grandson, John Devereux, on the same terms before mentioned in the case of Reverend Leonidas Polk, to whom my executors shall pay the sum of five hundred dollars for the removal of his lot of negroes.

ITEM 8TH.—I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs, and assigns, the sum of seven thousand five hundred dollars, in trust for the following purposes:
58 First. To Miss Eliza Taylor, daughter of M'r's Eliza Taylor, fifty dollars annually, during her natural life.

Secondly. To Miss Ellen Anderson, who was brought up by my friend M'r's Mary Jones, the sum of fifty dollars annually, during her natural life.

Thirdly. To M'r's Elizabeth Kunis, now residing in the town of Newbern, in the State of North Carolina, an annuity of fifty dollars, to be paid annually to Thomas Sparrow, esqr., of said town of Newbern, for the benefit of said Elizabeth Kunis during her natural life.

Fourthly. To two girls at the mission school in Ceylon, who bear the names of Catharine Ann Devereux and Frances Ann Polk, forty dollars per annum, to be paid annually to the secretary of the American Board of Commissioners for Foreign Missions, for their support at said mission school.

Fifthly. To the Reverend Theron Baldwin, corresponding secretary of the Society for Promoting Collegiate and Theological Education at the West, or to his successors in office, one hundred and twenty dollars per annum, to be applied by him in the cause of female education in the West or valley of the Mississippi, the object being to prepare pious Protestant females for teachers in that part of our country.

Sixthly. To Thomas P. Devereux, one hundred and forty dollars per annum, to aid in supporting a teacher, should he thing fit to employ one, to give religious instruction to the slaves on the Roanoke
59 River, particularly those in the possession of my descendants.

Should all or any of said annuities or charities lapse, in consequence of the death of the person or persons to whom they should be paid; should the said Society for Promoting Collegiate and Theological Education at the West fail, in process of time, to carry out its specified

object; and should the said Thomas P. Devereux not employ a teacher as above stated, then it is my will that my executors and the survivors of them, pay over such sum or sums to the individual whom the Presbytery of Orange shall appoint to receive the same, which amount shall be employed by said Presbytery of Orange, for the extension of the Redeemer's kingdom in any way which that body shall deem best.

ITEM 9TH.—It is my will that the house and lot in Chapel Hill, purchased of Sidney Barber, be disposed of as my executors deem best; if sold upon credit, a mortgage must be taken upon the property, until payment is made, which payment is to be invested in some productive stock.

ITEM 10TH.—From the funds arising from the sale of the negroes above mentioned, and the house and lot in Chapel Hill, it is my will that at the death of M'r's Eliza Taylor, her daughter, Louisa, shall receive the further sum of one hundred and fifty dollars annually, during her natural life; or, should the said Eliza Taylor, by any providential visitation, be rendered incapable of teaching schools, or arrive at the age of sixty years, then, in either of these contingencies, the said Louisa Tay-
60 lor shall receive the above-mentioned sum of one hundred and fifty dollars per annum, during her natural life, over and above the sum of fifty dollars per annum, heretofore provided for her. The same to be paid to the said Louisa Taylor by my executors annually.

ITEM 11TH.—I give and bequeath to Jesse Brown, George Simpson, Seymour W. Whiting, and William J. Clarke, trustees of the Presbyterian Church or society in the city of Raleigh, or their successors in office, five negroes, viz, Tom, Viney, Priscilla, and her sons, George and Henry, with their increase, in trust, to be used or employed by the pastor of said church as he may direct; but should said church or congregation, in process of time, fail to adhere to the doctrine, order, or form of church government set forth in the confession of faith of the Presbyterian Church in the United States of America, then, in that case, I direct that the said negroes and their increase shall return to my executors, to be distributed according to law; and further, it is my will that if the said church or congregation shall at any time fail to raise annually as the salary of the pastor or minister, the sum of six hundred and fifty dollars, exclusive of the avails of said negroes given for the benefit of the pastor, then, and in that case, the bequest of said negroes shall be void, and they, the said negroes, with their increase, shall return to my executors, and be distributed according to law. It is my will that the said negroes, if hired out, should have a choice of masters, subject to the approval of the pastor of the church, and that they should not be
61 publicly hired out.

ITEM 12TH.—I give and bequeath to S. S. Souter, of the borough of Norfolk, and State of Virginia, to his executors, administrators, and assigns, the sum of five hundred dollars, in trust nevertheless, for the association known as the Seamen's Friend Society of said borough, the said sum of five hundred dollars to be disposed of so as to promote the welfare of that society. In case the above sum shall be given to said society before my death, then this bequest is to be void.

ITEM 13TH.—I give and bequeath to Elizabeth Lacy, daughter of Rev. Drury Lacy, at present residing in the city of Raleigh, a servant girl named Sarah, the daughter of Priscilla, now about seven years of age, the said Sarah to remain with her mother until she is a proper age to be taken from her.

ITEM 14TH.—In consideration of the faithful services of my female servant Evelina, it is my will that at my death she shall be sold to such

person as she may choose for the master, and that my executors shall make and execute a good and sufficient title to the said Evelina, to such person, upon his executing a bond with a good and sufficient security, conditioned to pay and expend the sum of fifty dollars annually, for the period of four years, which is to be expended in employing some suitable person to distribute tracts and religious books in the most destitute portions of the counties of Nash, Wayne, and Johnston, and if the
62 said person selected shall fail to perform the consideration of the bond before mentioned, then the sale to be void, and the servant girl Evelina is to make a second choice, and so on until the same shall be effected and my wishes complied with.

ITEM 15TH.—It is my wish that my servant girls, Rebecca and Delia, shall be sold to some person or persons residing within the limits of the State of North Carolina, and that the said servants shall not be sold at public sale (and only to those who intend to retain them as domestics), the price to be fixed by some discreet person or persons, my object being to keep them near their relatives.

ITEM 16TH.—It is my will and desire that my executors should sell all the stock of horses, cattle, hogs, &c., crops and farming utensils, and any personal property I have in the possession of my grandson, John Devereux (negroes excepted). Also my carriage and wagon, or any other property of the same description, and pay all my debts. And should the said property be found insufficient to pay the debts, then it is my will and desire that the negroes which may be in the possession of my grandson, John Devereux, at the time of my death shall be hired out, and the proceeds applied to the payment of the balance, until the same shall be fully paid and satisfied, unless my grandson and son-in-law should arrange the payment of the same in some other way, and take the negroes into their possession.

63 Should it appear at my decease that the bequests exceed the amount of funds left, my will is that the first five only shall be curtailed until brought within the limits of the assets.

It is my further will and desire, and I do so direct and appoint, that if any one or more of the legacies hereinbefore given, or intended to be given, by me should fail to take effect through any informality, or from any other cause, that then the said sum so failing shall be added to and form a part of the other legacies which shall be lawful and valid.

I do hereby constitute and appoint Frederick Nash, senior, Thomas P. Devereux, John Primrose, and William D. Cooke, my lawful executors to execute my last will and testament, according to the true intents of the same, and having full confidence in the integrity and fidelity of my executors, I desire they may be exempted from the necessity of giving security for the execution of the duties and trusts hereby to them committed.

In witness of all which I, the said Frances Devereux, do hereunto set my hand and seal this twentieth day of August, A. D. 1848.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
WILLIAM J. CLARKE.
CATHARINE E. FULLER.

Codicil.

Since the execution of my last will and testament, I have concluded to make certain alterations and amendments thereto, as contained

64 in the following codicil, which I do hereby constitute a part of my said will, to take effect and be considered as such.

ITEM 1ST.—Should my son-in-law, Reverend Leonidas Polk, take families of my negroes, according to item 7th, of my last will and testament, then it is my desire, furthermore, that out of the interest due annually on his bonds given for said negroes he retain one hundred and fifty dollars per annum, to be expended for the religious instructions of the negroes, after their removal from this State. And furthermore, if the settlement of my estate will allow of further indulgence, then it is my wish that the said Reverend L. Polk be not pressed to pay the instalments, but be allowed to pay them in his own time, or at such periods as will best suit his convenience.

ITEM 2ND.—Having learned that D'r Simmons I. Baker does not intend to remove from this State, I hereby name and appoint him, together with my respected son-in-law, the Reverend Leonidas Polk, as executors to my last will and testament, in addition to those gentlemen heretofore named and appointed.

ITEM 3RD.—The religious instruction of the slaves on the Roanoke River being a matter which I greatly desire to promote, I hereby earnestly request my executors to secure the services of an efficient, competent clergyman, who will be willing to itinerate up and down the
65 river and preach at the different plantations; and I hereby authorize them to pay said clergyman a liberal allowance for his services during eight months of the year. It is furthermore my wish that he be supplied annually with the publications of the American Tract Society for gratuitious distribution among the families of that region of country.

ITEM 4TH.—I give and bequeath to the American Tract Society, instituted in the city of New York, one thousand dollars, to be applied to the charitable purposes of said society.

ITEM 5TH.—Some time ago I made an arrangement by which I hoped to secure the payment of two hundred dollars a year to M'r's Elizabeth Chester, of Weathersfield, Connecticut, for four years, the first payment to be made December the 20th, A. D. 1848. Should any unfor'seen circumstance prevent the remittance of said sum of two hundred dollars per annum for four years, it is my desire that my executors make that amount good to M'r's Chester for that time, after which she is to receive from them one hundred and fifty dollars per annum during her life.

ITEM 6TH.—To my esteemed pastor, the Reverend Drury Lacy, I give and bequeath the sum of fifty dollars, for the purpose of making additions to his library, which is independent of the pastor's library. And whereas in the body of my will I have given to his daughter, Betsey, a girl named Sarah, and I now see fit to dispose said girl Sarah
66 otherwise, I give and bequeath to said Betsey, in her place, George, a son of my servant Prescilla.

ITEM 7TH.—In the body of my will I have given to the school under the care of the Female Benevolent Society the sum of five hundred dollars; in addition to which I hereby bequeath to it my servant girl Sarah, who is to be left entirely at the disposal of M'r's Colburn, until she is twelve years old, after which she is to be hired and the profits of her labor given to the school, provided the annual subscription from the ladies of the town amounts to the sum of one hundred dollars; in case it does not, then it is my will that said Sarah, and the interest of the five hundred dollars, be employed in educating some girl as a teacher, who is to be chosen by those ladies who were last officers of the Female Benevolent Society.

ITEM 8TH.—I give and bequeath to M'r Henry Hardie, son of M'r's Marion Hardie, of this city, the sum of three hundred dollars, to aid him in getting a theological education at Princeton, New Jersey, which sum is to be placed in the hands of M'r John Primrose, to be paid to said Henry Hardie, as his necessities may require. Should this donation lapse in consequence of the death of said Henry Hardie, then it is my will that the above amount be applied to sustain Sabbath-schools in destitute places, or to aid in supporting colporteurs.

67 ITEM 9TH.—Having learned that my daughter-in-law, M'r's S. E. Devereux, declines taking my servant Eveline, who wishes to be sent to her, it is my wish that said Eveline be placed under the care of some lady going to Philadelphia; she is then to be left free to remain in said city, or, if she chooses to return, it is my wish that my executors shall pay her expenses back to this place, where she shall be sold under the following provisions, to wit: Having chosen an owner, she shall be valued by competent persons, and then sold for one hundred dollars less than such valuation, the purchaser giving bond for the payment of one hundred dollars annually until the whole price is paid; which sum I wish expended each year in the manner designated in item 14th of my last will and testament.

ITEM 10TH.—Should Judge Nash accede to my proposal, it is my wish that his drafts be honored, without security, to the amount of five hundred dollars, no interest being required of him for four years.

ITEM 11TH.—As my grand-children attain the age of fourteen years, I desire that each of them may be furnished by my executors with a copy of the Holy Scriptures, with Scott's or Henry's Commentary; also Dwight's Life of my grandfather, J. Edwards; Wilberforce's Practical View of Religion, Newton's Works, Mason on Self-knowledge, The Great Change, by Redford, and Mason's Spiritual Treasury. I wish

68 these works to be of the largest sizes and best editions—London copies, if they can be procured.

ITEM 12TH.—With respect to the girls at the mission-school in Ceylon, the annuities cannot lapse, for a successor is selected who takes the name and privileges of the girl removed.

ITEM 13TH.—I give and bequeath to my ever-dutiful son, Thomas P. Devereux, my brother's portrait and the miniature likeness of his father.

ITEM 14TH.—To my beloved daughter, Frances A. Polk, I give the miniature of my mother, the portrait of M'r's Pollok, in crayon, the large Bible in two volumes, once belonging to my mother, a small silver tea-pot, made for my father, a spoon and fork, commonly used by my brother, the small open spoon with a pointed handle, four pitchers of a fox-chase, a chest of drawers, and old-fashioned heavy round mahogany table at the plantation, and a pair of old lamps, also at the plantation.

ITEM 15TH.—To M'r's Sarah E. Devereux, I give the chandeliers which were brought from France by my brother.

ITEM 16TH.—To Hamilton Polk, I give the portrait of his father.

ITEM 17TH.—To Frances Polk, I give the portrait of her mother.

ITEM 18TH.—To Frances J. Miller, I give a silver tea-pot, cream-pot, sugar bowl and tongs, six dessert-spoons, and six teaspoons, in trust for her daughter Catharine, should said daughter survive her mother.

69 ITEM 19TH.—To Catharine Edmondston, the Brussels carpet, if she thinks it worth calling for.

ITEM 20TH.—Should William J. Clarke go to housekeeping in this State, my granddaughter, Mary B. Clarke, is at liberty to take any articles of household or kitchen furniture as she may wish, except such as I have otherwise disposed of. Should William J. Clarke not become

a resident of this State, my will is that William D. Cooke, of this place, shall have the liberty which was given to Mary B. Clarke, and also that the few articles loaned him by me be considered as his property.

ITEM 21ST.—I give to my granddaughter, Honoria Cannon, the tablespoons marked "N. D."; two ladles, marked "A. B. P."; the salt-cellars, and all my household linen, except such as I otherwise dispose of, and a set of dimity curtains in the room which I now occupy.

ITEM 22ND.—To Mary B. Clarke I give my plated ware, all my glassware, and the best Marseilles quilt.

ITEM 23RD.—To M'r's Eliza Primrose I leave the chair covered by herself, together with the tidy presented to me by Miss Parmlee.

ITEM 24TH.—From my apparel, I wish my granddaughter, Frances J. Miller, and M'r's Primrose to select such articles as they may deem proper, to send to M'r's McPheeters; my common dresses to be sent to E. Kunis, of Newbern; my cloak, bombazine dress, and two summer dresses, to M'r's Goodwin, as tokens of affectionate remembrance.

70 ITEM 25TH.—Nor would I close without acknowledging my obligations to William D. Cooke, who, during the frequent absence of my son, as far as possible supplied his place. As a small proof of my esteem, I therefore give and bequeath to him the sum of one hundred dollars, in addition to the articles in item 20th of this codicil, which Mary B. Clarke may not take.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and published the 16th day of April, 1849, in presence of—

MARY B. CLARKE.
WILLIAM J. CLARKE.

Suing out of subpœna.

And thereupon, on the 1st day of April, A. D. 1859, the said Frank G. Q. Umstid and Elizabeth J. Devereux Umstid, his wife, and Georgina P. Devereux, sued and prosecuted out of the said circuit court of the United States, by their attorneys aforesaid, a subpœna in the words and figures following, to wit:

Subpœna for T. P. Devereux.

UNITED STATES OF AMERICA,
North Carolina District:

Circuit court, 5th circuit.

The President of the United States to the marshal of the United States for the district aforesaid, greeting:

You are hereby commanded to summon Thomas P. Devereux to be and appear before the honorable the judges of our circuit court,
71 to be held for the district aforesaid, at Raleigh, on the 1st Monday of June next, then and there to answer concerning such things as shall then and there be objected to by Frank G. Q. Umsted, Elizabeth J. D. Umsted, and Georgina P. Devereux; and to do further and receive what the said court shall consider in this behalf, under the penalty of the law.

Herein fail not, and have you then and there this writ.

Witness Hon. Roger B. Taney, Chief Justice of the United States, at Raleigh, the last Monday of November, A. D. 1858.

Issued the 1st of April, A. D. 1859.

[SEAL.] HENRY R. BRYAN,
Clerk of C. C.

Proceedings of June term, A. D. 1859.

On which last-mentioned day, to wit, on the first Monday in June, in the year of our Lord one thousand eight hundred and fifty-nine, and of our Independence the eighty-second year, the same being the sixth day in said month, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the honorable Asa Biggs, district judge, presiding.

Return of subpœna.

The said subpœna is returned into court, with endorsements thereon in the words and figures following, to wit: "Service accepted
72 April 6th, 1859. T. P. Devereux."

"A printed copy of the bill was also served at the same time. T. P. Devereux."

Appearance of parties.

Then come the complainants, Frank G. Q. Umsted and Elizabeth J. Devereux Umsted, his wife, and Georgina P. Devereux, by their attorneys, Daniel G. Fowle and Ed. Graham Haywood; and the defendants, Leonidas Polk and Frances Ann Polk, his wife, by their attorney, W'm A. Graham; and the defendant Thomas P. Devereux, by his attorneys, George E. Badger, B. F. Moore, Henry W. Miller, and Patrick Winston, also come, and files his demurrer to the complainants' original bill of complaint, which said demurrer is in the words and figures following, to wit:

Demurrer.

In the circuit court of the United States for the district of North Carolina. In equity.

The demurrer of Thomas P. Devereux, defendant, to the bill of complaint of Frank G. Q. Umsted and Elizabeth J., his wife, and Georgina P. Devereux, complainants:

This defendant by protestation not confessing or acknowledging al[1] or any of the matters and things in the said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law thereto; and for cause of demurrer saith and showeth that the said complainants have not
73 by their said bill made such a case as entitles them, in a court of equity, to any discharge or relief from or against this defendant, touching the matters contained in the said bill, or any of such matters.

And for a further cause of demurrer this defendant showeth that the scope of the complainant's bill, as appears upon the face thereof, is to have an account of the administration of the estate of the late Frances

Devereux, deceased, in the bill mentioned, and such an account cannot be taken upon the matters appearing in the said bill, without an account also of the administration of the estate of the late John Devereux, deceased, in the bill mentioned, and upon the result of such an account of the administration of the estate of the said Frances depends, by the complainant's own showing in the said bill, the pretended demand thereon set up against this defendant, and therefore a personal representative of the said Frances, and also a personal representative of the said John, are necessary parties to the said bill; but yet the said complainants have not made such representative of the said Frances or of the said John a party to the said bill.

Wherefore, and for divers other good causes of demurrer appearing on the said bill of complaint, this defendant doth demur of the said bill, and prays the judgment of this honorable court, whether he
74 shall be compelled to make any other or further answer to the said bill, and he prays to be hence dismissed, with his reasonable costs in this behalf sustained.

GEORGE E. BADGER,
P. H. WINSTON,
For the Def't.

We, the undersigned, counsel for the defendant, do hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law.

GEORGE E. BADGER.
P. H. WINSTON.

Circuit court of the United States for the district of North Carolina.
June term, 1859.

Thomas P. Devereux, the defendant named in the foregoing demurrer, maketh oath that the said demurrer is not put in or interposed for the purpose of delay.

T. P. DEVEREUX.

Sworn to and subscribed before me, June 7th, 1859.
HENRY R. BRYAN, *Clerk of C. C.*

Demurrer set down for argument & overruled.

Whereupon the said demurrer is forthwith, by consent, set down for argument, and coming on this present day, to wit, the 7th day of June, A. D. 1859, to be argued before the honorable Asa Biggs, judge presiding as aforesaid, in the presence of counsel, learned, on both sides. Now, upon opening and debate of the matter, and hearing, &c., his honor doth order that the said demurrer be overruled and disallowed.

75 *Motion to amend O. B.*

And thereupon, during the same term of the court, upon motion, &c., it was alleged that since the coming in of said demurrer the plaintiffs are advised to amend their bill; and therefore, it was prayed, that the plaintiffs may be at liberty to amend their bill, as they may be advised, which is ordered accordingly.

Filing of amended bill.

And thereupon, during the same term of the court, the plaintiffs

aforesaid, by their attorneys aforesaid, file their amended bill, in the words and figures following, to wit:

Amended bill.

To the honorable the judges of the circuit court of the United States for the district of North Carolina:

Frank G. Q. Umsted and Elizabeth J. Devereux Umsted, his wife, both of the city, county and State of New York, and citizens of said State of New York, and Georgina P. Devereux, of Stratford, in the county of Fairfield and State of Connecticut, and a citizen of said State of Connecticut, bring this their bill against Thomas P. Devereux, of the county of Halifax and State of North Carolina, and a citizen of said State of North Carolina, and the Right Reverend Leonidas Polk, Bishop of Louisiana, and Frances Ann Polk, his wife, both of New Orleans, in the county of Orleans and State of Louisiana, and citizens of said State of Louisiana.

And thereupon your orator and oratrixes complain and say that your oratrixes are the only children of George P. Devereux, late of
76 Bertie County, in the State of North Carolina, deceased; that your oratrixes' said father departed this life on the 13th day of May, A. D. 1837; that your oratrix, Elizabeth J. Devereux Umsted, was then in the fourth year of her age, having been born on the 12th day of August, A. D. 1833; that your oratrix, Georgina P. Devereux, was born on the 10th day of Agust next following her said father's decease; that your oratrixes' said father, by his last will and testament, which was duly proved and allowed, appointed your oratrixes' mother to be their guardian during the period of their infancy.

That your oratrixes' mother, soon after the death of her husband, removed from the State of North Carolina to the State of Connecticut, where she has ever since resided; that your oratrixes resided with their said mother, and were under her sole guardianship and protection, during the entire period of their infancy, and your oratrix Georgina P. Devereux still so resides; that your oratrix, Elizabeth J. Devereux Umsted, intermarried with your orator, Frank G. Q. Umsted, on the 20th day of June, A. D. 1855, and thereupon removed to the State of Missouri, where she resided with her said husband until about the month of November, A. D. 1857, when they removed to the city of New York, where they have since resided.

That the defendants, Thomas P. Devereux and Frances Ann Polk, and your oratrixes' father, were brothers and sister, being the only children of John Devereux and Frances, his wife, both late of the
77 city of Raleigh, in the county of Wake, in the State of North Carolina, deceased; that the said Frances Devereux, your oratrixes' grandmother, survived the said John Devereux, her husband; that said Frances departed this life on the 3rd day of June, A. D. 1849, leaving her said son and daughter, and your oratrixes, as representing their deceased father, her sole heirs at law and next of kin.

That said John and Frances Devereux, during their life-time, and on the 3rd day of July, A. D. 1839, by deed of that date, conveyed to the said Thomas P. Devereux and his heirs a large amount of real estate, being all the real estate which had descended to the said Frances from her brother, George Pollok, then late of the county of Halifax, and State of North Carolina, deceased; that said conveyance was declared to be upon and subject to the following (among other) charges and trusts:

"First, that the said Thomas P. Devereux and his heirs and assigns

shall, on the 1st day of March in each and every year, during the life of the said Frances Devereux, pay to the said Frances, into her own hands or according to her own order, and to her sole and separate use, and subject to her own disposal, as if she were a femme sole and unmarried, the yearly sum of three thousand dollars. * * * Thirdly, that the said Thomas P. Devereux, his heirs or assigns, shall invest for or pay to the said Frances Devereux, at such time, in such portions, and in such manner and form as she shall direct and require, to and for her own sole and separate use, and subject to her own disposal, by will, deed,
78 or writing in the nature thereof, or otherwise, to all intents and purposes (notwithstanding her coverture), as if she were a femme sole and unmarried, the sum of fifty thousand dollars."

And for greater certainty a copy of said deed is hereto annexed, marked "A," and your orator and oratrixes pray that the same may be considered a part of this bill.

That a large part of said annual sum of three thousand dollars and of said gross sum of fifty thousand dollars, as your orator and oratrixes are informed and believe, remained unpaid by the said Thomas P. to the said Frances, or according to her appointment, order, or direction, at the time of the decease of the said Frances; and that said Frances, at the time of her deceased, was seized and possessed of a considerable amount of other property, real and personal, including a considerable number of negro slaves.

And your orator and oratrixes, further complaining, say that after the death of said Frances Devereux two paper writings were found, each of them being signed by the said Frances Devereux, and each of them purporting to be her last will and testament; one of said paper writings bearing date the 23rd day of December, A. D. 1847, and the other on the 20th day of August, A. D. 1848. That each of said paper-writings commenced as follows:

"In the name of God, amen. I, Frances Devereux, of the State of North Carolina, being of sound and disposing mind and memory,
79 and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby also to execute all powers vested in me and enacted by any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds, settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself."

That the dispositions contained in both said paper-writings consisted chiefly of pecuniary legacies to several charitable institutions, and some small legacies and annuities to female friends of said deceased; that said paper-writing bearing earliest date contained a legacy of four thousand dollars to each of five several charitable institutions; that in said paper-writing bearing latest date each of the said five legacies was cut down to two thousand dollars; that in other respects said two paper-writings were substantially alike; that your orator and oratrixes are informed and believe that said Frances, between the dates of said paper-writings, disposed of large sums of money for charitable purposes, and that this was the cause of said five legacies being cut down in said paper-writing bearing latest date.

That Frederick Nash, senior, the said Thomas P. Devereux, John Primrose, and William D. Cooke were named as executors in both said
80 paper-writings, and the said Primrose and Nash are now deceased, having died since the appointment of S. W. Whiting as adminis-

trator cum testamento annexo. That neither of said paper writings contained any residuary devise or bequest, and that the property left by said Frances was much more than sufficient to pay all her debts, funeral, and testamentary expenses, and the legacies and annuities contained in either of said paper-writings.

Copies of both said paper-writings are for greater certainty hereto annexed, marked B and C, respectively, and your orator and oratrixes pray that the same may be considered a part of this bill.

That your orator or oratrixes have not sufficient knowledge or information to form a belief, whether either of said paper-writings was the last will and testament of said Frances, nor whether said Frances was, at the date of either of said paper-writings, of a sound and disposing mind, memory, and understanding; nor whether either of said paper-writings was properly executed as a last will and testament, according to the laws of North Carolina; but they are informed and believe that, if the the said Frances was of a sound and disposing mind, memory, and understanding at the earliest of the dates above named, she was so also at the latest of the dates above named; that the defect in the execution of said paper-writings, if any, was the incompetency of one of the
81 attesting witnesses thereto, on account of interest, and that this objection was equally applicable to both said paper-writings; and they are also informed and believe that, if either of said paper-writings was the last will and testament of said Frances, it was said paper-writing bearing latest date.

And your orator and oratrixes, further complaining, say, that soon after the death of said Frances Devereux, the said Thomas P. Devereux, being then on a visit to your oratrixes' mother in the State of Connecticut, informed her that he intended to contest the probate of both said paper-writings, and expressed great confidence that said contest would be successful, thereby inducing her to believe that there was no conflict of interest between the said Thomas P. Devereux and your oratrixes; and that their interests would be protected, though she should take no active part in contesting the probate of said paper-writings.

That soon after the said T. P. Devereux's return to the State of North Carolina, he wrote to your oratrixes' mother, saying that the probate of said paper-writings were about to be contested by him, and requesting her to join with him in behalf your oratrixes; that she, in reply to said communication, expressed reluctance to joining in said contest, from feelings of delicacy; but declared her willingness to join if
82 the said Leonidas Polk and Francis Ann, his wife, also joined; but she, as your orator and oratrixes are informed and believe, gave the said T. P. Devereux no authority whatever to act on behalf of your oratrixes.

That the said T. P. Devereux, without any further communication with your oratrixes' mother, and without any authority in that behalf, pretended to employ William H. Haywood, j'r, then a counsellor at law, practising in the State of North Carolina, to appear for your oratrixes, and contest the probate of said paper-writings.

That at a court of pleas and quarter sessions, begun and held at the court-house, in the city of Raleigh, within and for the county of Wake, on the third Monday (the 26th day) of August, A. D. 1849, said paper-writings were propounded by said William D. Cooke, one of the executors therein named, for probate, as the last will and testament of said Frances Devereux, deceased; that said paper-writings were thereupon filed in said court, and an order made that subpœnas issue to the subscribing witnesses, and that notice issue to the next of kin of said deceased,

citing them to be and appear at the next court, to hear the proceedings of said court in respect to the probate of said paper-writings, as the last will and testament of said deceased.

That on the same day, the said William H. Haywood, j'r, procured himself, by an order of said court, to be appointed guardian ad
83 litem for your oratrixes, and to defend their rights and interests in said proceeding, and caused it to be stated on the record of said court that said order was made at the instance of their mother, who resides with them in Connecticut, which statement, as your orator and oratrixes are informed and believe, was made at the suggestion and upon the authority of the said Thomas P. Devereux, and was entirely false.

That the said Thomas P. Devereux, in entire contradiction to what he had so as aforesaid stated and represented to your oratrixes' mother, and induced her to believe, gave out and represented in the State of North Carolina, and to the persons and institutions interested under said paper-writings, as legatees, that he took no part in said proceedings, but was entirely neutral, and that the probate of said paper-writings was to be contested by your oratrixes' alone; and accordingly he admitted notice of said proceedings, but did not appear therein.

That during the pendency of said proceedings, the said Thomas P. Devereux entered into negotiations with said charitable institutions, the principal legatees in said paper-writings, for the purchase of their respective legacies; that the said William H. Haywood, j'r, while professing to act for your oratrixes in said proceedings, acted as the
84 attorney and counsel of said Thomas P. Devereux in said negotiations, and as such conducted the correspondence between the said legatees and the said Thomas P. Devereux; that the said Haywood, acting as such attorney and counsel, made a proposition of said legatees to the effect that said Thomas P. Devereux would pay to each of them the sum of two thousand dollars, in consideration that they would, assign and transfer to him for his own use and benefit all their claims, rights, and interest under said paper-writings. That while said negotiations were pending and before said proposition was accepted, such proceedings were had in said court of pleas and quarter sessions; that on the third Monday in August, A. D. 1850, upon an issue awarded to try whether said paper-writings or either of them was the last will and testament of said Frances Devereux, deceased, it was found by a jury duly summoned, sworn, and empanelled to try said issue, that neither of said paper-writings was the last will and testament of said Frances; and thereupon judgment was rendered accordingly, from which judgment the said Cooke prayed an appeal to the next superior court of law for Wake County, which was granted and the appeal bond waived.

And your orator and oratrixes further complaining say, that
85 soon after said verdict and judgment, in said court of pleas and quarter sessions, the said charitable institutions accepted said proposition of Thomas P. Devereux, and thereupon respectively executed and delivered to him a deed or instrument in writing, purporting to assign, convey, set over and release to him all rights and interests which they had under either of said paper-writings, and empowering him to recover and collect the same to his own use.

That afterwards, and during the pendency of said appeal, and just before the same was tried, the said William D. Cooke, the appellant, upon motion made in said superior court, obtained leave to withdraw from said suit altogether, and accordingly his name was stricken therefrom; and thereupon the said Thomas P. Devereux, one of the execu-

tors named in said paper-writings, became a party to said suit, as executor and appel'ant, in the place and stead of said Cooke.

That afterwards such proceedings were had in said superior court, on said appeal, that at a special term of said court begun and held at the court-house in the city of Raleigh, within and for the county of Wake, on the third Monday of July, A. D. 1852, upon an issue whether either of said paper-writings was the last will and testament of said Frances Devereux, deceased, a verdict was obtained by the said Thomas P. Devereux that said paper-writing bearing earliest date was
86 her last will and testament; whereupon it was ordered that a procedendo issue to said court of pleas and quarter sessions to admit to probate said last mentioned paper-writing, and to have duly qualified Thomas P. Devereux, the executor therein named.

That said Thomas P. Devereux never informed your oratrixes' mother that he had employed said Haywood to act for them, and neither said Devereux nor said Haywood ever informed her as to said proceedings in the court of pleas and quarter sessions, or on said appeal, nor consulted her in reference thereto, and she remained in total ignorance thereof, except as she occasionally and accidentally received information from other sources.

That your oratrixes' mother, being on a visit to North Carolina, during the pendency of said appeal, and after the purchase of said legacies by said Devereux, sought an interview with said Haywood, which the said Haywood declined, alleging that he did not recognise her in the transaction; that he acted for her children; although the said Haywood well knew that she had no personal interest in the estate of said Frances Devereux, and much less any interest in conflict with the interest of her children. That on the same visit the said Devereux informed your oratrixes' mother, in answer to her inquiries, that it would be wholly immaterial to your oratrixes whether said paper-writ-
87 ings were admitted to probate or not, as he intended in any event to carry out his mother's charitable designs; whereas in truth he had already purchased up the bulk of said charitable legacies, and he alone was mainly interested in sustaining said paper-writings or either of them.

That, as your orator and oratrixes are informed and believe, said appeal and the proceedings thereon were entirely under the control of said Thomas P. Devereux; that said Haywood, so far as he acted at all in said proceedings, acted entirely under the direction and according to the wishes of said Devereux; and that your oratrixes were in fact wholly unrepresented in said proceedings; and that said proceedings were entirely irregular and fraudulent.

That the sole purpose of said Thomas P. Devereux, in conducting said proceedings and in purchasing said legacies, was to deprive your oratrixes of their just rights, as next of kin of said Frances; that said charitable institutions received all that they were legally and justly entitled to, as the said Devereux well knew; and it was only by depriving your oratrixes of their just rights, as aforesaid, that said Devereux could derive any benefit from said purchase. And your orator and oratrixes are advised that said legacies will be deemed to have been paid off and extinguished for the benefit of the estate of said
88 Frances, and that said Devereux will not be entitled to any benefit from the purchase of said legacies, except in common with your oratrixes. And your orator and oratrixes further say, that said Thomas P. Devereux, at the time of the transactions hereinbefore stated, stood in a relation of great confidence to your oratrixes and their

mother; that he was their nearest male relative in North Carolina to whom they could look for advice and protection; that your oratrixes' mother knew him to be a lawyer of superior knowledge and skill, and placed implicit reliance upon whatever he told her; all of which the said Devereux well knew.

And your orator and oratrixes, further complaining, say that at a court of pleas and quarter sessions begun and held at the court-house in the city of Raleigh, within and for the county of Wake, on the third Monday of November, A. D. 1852, the said paper-writing bearing earliest date having been previously admitted to probate and recorded in said court in pursuance of the procedendo hereinbefore referred to, the said Thomas P. Devereux appeared in open court by his attorney in fact, George W. Mordecai, and pretended to renounce his office of executor of the last will and testament of said Frances Devereux, deceased; whereupon one S. W. Whiting was appointed administrator of said
89 Frances, with the will annexed. But your orator and oratrixes are informed and believe that said Thomas P. Devereux intermeddled with the assets of said deceased, both before and after his pretended renunciation, and had the entire and exclusive control and administration thereof; that he took possession of said assets immediately upon the decease of said Frances, retained them in his possession, disposed of them from time to time, and converted them to his own use according to his will and pleasure; and, especially, that on or near the seventh of October, A. D. 1852, the said Thomas P. Devereux, before the appointment of Whiting as administrator, with the will annexed, caused certain slaves belonging to the estate of the said Frances Devereux, deceased, amounting to the number of fifty-seven, to be appraised and divided between the said Devereux and the other defendants; that said appraisal and division were made after the death of William H. Haywood, j'r, your oratrixes' pretended guardian ad litem; and that the said Devereux has now in his possession, or in the possession of his attorney or agents, the original paper, or a copy thereof, containing the details of said appraisal and division; that said Whiting was appointed by the procurement of said Thomas P. Devereux, and as a mere
90 form, the said Devereux becoming his bondsman; that he either never acted at all in the administration of said assets, or acted entirely under the direction of said Devereux; that said Whiting never returned any inventory, nor rendered any account of his administration, and is now deceased.

That said Devereux's renunciation of his executorship, as your orator and oratrixes are informed and believe, was a contrivance on his part, in order to avoid being called to account by your oratrixes; and that he procured said renunciation to be accepted by a concealment and suppression of the facts herein stated; and your orator and oratrixes are advised that said renunciation, as to them, is wholly void and of no effect.

And your orator and oratrixes further complaining, say that they are informed and believe that said Frances Devereux, during her life made large settlements upon the son Thomas P. Devereux, and her daughter Frances Ann Polk; and your orator and oratrixes are advised that said settlements or advancements are to be accounted for in ascertaining the share or portion of the estate of said Frances, to which your oratrixes are entitled. And your orator and oratrixes are informed and believe that upon such accounting it would appear that your oratrixes, as representing their late fathers, are entitled to all the property
91 which the said Frances left undisposed of.

And your orator and oratrixes further complaining, say that

your oratrixes being so entitled as aforesaid, have frequently, and in a friendly manner, by themselves and others, applied to the said Thomas P. Devereux, and requested him to come to an account with them for the real and personal estate and effects of their said grandmother, deceased, to which she way entitled as aforesaid, and to pay to them the clear residue thereof; and they well hoped that said Devereux would have complied with such their request, as in justice and equity he ought to have done.

But now, so it is, may it please your honors that the said Thomas P. Devereux absolutely refuses to comply with such your oratrixes' request, sometimes pretending that said Frances left barely sufficient property to pay her debts and legacies; at other times pretending that the property of said Frances, other than said sum of fifty thousand dollars, over which she had a power of appointment, was first to be applied to the payment of her debts and legacies, leaving said sum to lapse for his benefit; at other times pretending that the whole or nearly the whole of said sum of fifty thousand dollars, and said annual sum of three thousand dollars, was paid to the said Frances, or according to her appointment,
92 during her life; at other times pretending that he had a right to purchase, and did purchase, said charitable legacies for his own benefit, and that he has a right to receive out of the estate of said Frances, on account of said legacies, twice the amount that he paid for the same; at other times pretending that the said Frances Devereux made no advancements, during her life, to himself and to said Frances Ann Polk, or, if she did, that said advancements are not to be accounted for in ascertaining the distributive share of your oratrixes in the estate of said Frances; at other times pretending that he never accepted the office of executor, nor intermeddled with the assets of said Frances, or, if he did, that his renunciation was nevertheless good and valid, and that he is not liable to be called to account by your oratrixes; whereas your orator and oratrixes expressly charge the contrary of each and every of said pretences to be true.

All of which actings, doings, and pretences of said defendant are contrary to equity and good conscience, and tend to the manifest wrong and injury of your oratrixes. To the end, therefore, that the said defendants may, upon their several and respective oaths, according to the best and utmost of their several and respective knowledge, remembrance,
93 information, and belief, a full, true, direct and perfect answer make to all and singular the matters aforesaid, and that as fully as if the same were here repeated, and they were particularly interrogated thereto; and more especially that the said Thomas P. Devereux, may, in manner aforesaid, answer and set forth, whether a large part of said annual sum of three thousand dollars, and said gross sum of fifty thousand dollars, did not remain unpaid by the said defendant, either to the said Frances, or her appointees, at the time of her death, and what part and how much in particular of said sums so remained unpaid; and whether the said Frances at the time of her decease, was not seized and possessed of a considerable amount of other property, real and personal, and how much in particular of each; and whether her personal property did not include a considerable number of negro slaves, and how many in particular, and of what else in particular it consisted; and whether her property was not much more than sufficient to pay all her debts and legacies, and how much more; and whether he did not make to your oratrixes' mother the several statements and representations hereinbefore set forth, or what other statements and representations in that be-

half, and at the several times, and upon the several occasions
94 hereinbefore stated, or at what other times and on what other occasions; and whether he did not write to your oratrixes' mother at the time and to the effect hereinbefore stated, or at some other time, and to a similar effect; and whether your oratrixes' mother did not answer his said lettter to the effect herinbefore stated or to what other effect; and whether he did not profess to employ William H. Haywood, j'r, to act for your oratrixes as hereinbefore stated, or how otherwise; and whether in so doing, he acted under any and what authority; and whether he did not give out and represent in the State of North Carolina, and to the persons and institutions interested under said paper-writings, as legatees, that he took no part in contesting the probate of said paper-writings, and that the probate of said paper-writings was to be contested by your oratrixes alone; and whether did not enter into negotiations to purchase said legacies, at the time and in the manner hereinbefore stated, or how otherwise; and whether the said William H. Haywood, j'r, did not act as his attorney and counsel in such negotiations, and as such conduct the correspondence between the said Devereux and the said legatees, or how otherwise; and whether
said Haywood did not, as such attorney and counsel, make a
95 proposition to said legatees, to the effect hereinbefore stated, or how otherwise; and whether said Devereux ever informed your oratrixes' mother that he had employed said Haywood to act for your oratrixes, or ever informed her as to said proceedings in said court of pleas and quarter sessions, or on said appeal, or ever consulted her in reference thereto, and if so, when, and how; and whether the said Devereux, both before and after his pretended renunciation of his executorship, did not intermeddle with the assets, which were of said Frances, and control and administer the same, in the manner and to the extent hereinbefore stated, or in some other and what manner, and to some other and what extent; and whether said Whiting ever acted in the administration of said assets, and if so, to what extent; and whether said Frances Devereux did not, during her life, make large advancements to the said Thomas P. Devereux and to the said Frances Ann Polk, and to what amount in particular.

And that the said defendant may set forth a full, true, and just inventory and account of all and singular the goods, chattels, real and personal estate, and effects whatsoever which the said Frances Devereux
was seized or possessed of, interested in, or entitled to at the time
96 of her death, and all the particulars whereof the same consisted, including said sum of fifty thousand dollars, said annual sum of three thousand dollars, and the quantities, qualities, full, real, and true values of all and every such particulars; and whether all or some, and which of such particulars have not, and when, been possessed or received by or come to the hands of him, the said defendant, or of some and what person by his order or for his use; and how and in what manner, and when and where, and by and to whom, and for how much, the same and every or any and what parts or part thereof have or hath been sold or disposed of; and whether any and what parts thereof, and to what value and amount, now remain undisposed of, and what has become thereof; and also a particular account of all and every the debts whatsoever which were justly due and owing from the said Frances Devereux at the time of her death, and to whom and for what and on what securities, if any, the same were respectively due, and whether any and what sums of money have been since paid in or towards the discharge of all or any and which of the said debts, and when and by

whom and to whom and for what, and whether any and what sums or sum of money do or doth now remain unpaid on account thereof;
97 and whether the said defendant hath not in his possession or power divers or some and what books, accounts, books of accounts, letters, copies of letters, and extracts of letters, memoranda and writings relating to the matters hereinbefore mentioned, or some or one and which of them, and that he may set forth a list or schedule thereof, and may produce the same according to the rules and practice of this court; and whether the said defendant hath now in his possession or power all such of the aforesaid particulars as at any time have or hath been in his possession or power, and if not, then that he may set forth what has become thereof, and in whose possession or power the same were when he last saw or heard of them respectively.

And that an account may be taken of the real and personal estate and effects of the said Frances Devereux possessed by or come to the hands of the said defendant, or to the hands of any other person or persons by his order or to his use, or which but for his wilful default or neglect might have been possessed or received by him, including said sum of fifty thousand dollars, and said annual sum of three thousand dollars, and also an account of the said Frances' funeral expenses, debts,
98 and legacies, and that the said Frances' real and personal estate may be applied to the payment thereof in a due course of administration, and that the residue and clear surplus thereof may be ascertained and your oratrixes' just share and proportion thereof decreed to be paid to them. And that your oratrixes have such further or other relief in the premises as the nature and circumstances of their case may require, and to your honors shall seem just.

May it please your honors to grant unto your orator and oratrixes a writ of subpœna, to be directed to the said Thomas P. Devereux, Leonidas Polk, and Frances Ann Polk, his wife, commanding them, and each of them, by a certain day and under a certain penalty therein to be inserted, to be and appear before your honors in said court, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orators, as in duty bound, shall ever pray, &c.

FRANK G. Q. UMSTED.
ELIZABETH J. DEVEREUX UMSTED.
GEORGINA P. DEVEREUX.

Exhibit A, with amended bill.

Deed from John and Frances Devereux, his wife, to Thomas P. Devereux and his heirs, July 3rd, A. D. 1839.

99 This indenture, made the 3rd day of July, in the year of our Lord one thousand eight hundred and thirty-nine, between John Devereux, esq'r., of the county of Wake, and Frances Devereux (formerly Pollok), his wife, of the one part, and Thomas P. Devereux, of the same county (son of the said John and Frances), of the other part, witnesseth:

That whereas George Pollok, esq'r., late brother of the said Frances, hath recently departed this life, intestate, unmarried, and without issue, leaving the said Frances and the children of a deceased half-sister, on the part of his mother, his heirs at law; and was seized in fee-simple at the time of his death, of divers messuages, tracts, lots, and parcels

of land, situate in the counties of Orange, Halifax, Northampton, Martin, Bertie, Craven, Jones, and elsewhere in the State of North Carolina, of which land some had been transmitted by descent, and derived by gift, devise, or settlement to the said George from his paternal ancestors, and have now, by his death, descended upon the said Frances as the sole heiress of the said George, on the part of his father; and others of the said lands were purchased by the said George during his life, and now, by his death, have descended upon the said Frances and the said children of his said deceased sister, as tenants in common;
100 the said Frances entitled to one undivided moiety, and the said children, as representing their mother, together entitled to the other undivided moiety thereof; and whereas the said John and Frances are minded to settle and assure all the said lands and real estate which have so accrued to the said Frances, in the manner, and to and for the uses, and trusts, and purposes, hereinafter expressed and declared:

Now, therefore, in consideration of the premises and of one dollar by the said Thomas to the said John and Frances in hand paid, and for divers other good causes and considerations, they, the said John Devereux and Frances, his wife, have given, granted, bargained, and sold, and do, by these presents, give, grant, bargain, and sell, unto the said Thomas P. Devereux, and his heirs, all the said messuages, tracts, lots, and parcels of land situate in the counties above named or elsewhere, which, on the death of the said George Pollok, descended upon the said Frances as his only heiress on the part of his father, and also all the moiety, share, and portion of the said Frances in, of, and to all the said messuages, tracts, lots, and parcels of land situate in the said counties or elsewhere, which have descended upon the said Frances and the said children of the said deceased sister of the said George, as tenants
101 in common, together with all the right, title, interest, property, and estate of them, the said John and Frances, and each of them, of, in, and to the same, & all other the land and real estate whereso-ever situate, which were of the said George Pollok, at his death, to have and to hold the same, with the appurtenances, unto him, the said Thomas P. Devereux, his heirs and assigns, forever, upon and subject, nevertheless, to the following charges, uses, trusts, restrictions, directions, provisions, and limitations, that is to say:

First. That the said Thomas P. Devereux, and his heirs and assigns, shall, on the first day of March, in each and every year, during the life of the said Frances Devereux, pay to the said Frances, into her own hands, or according to her own order and to her sole and separate use, and subject to her own disposal, as if she were a feme-sole and unmarried, the yearly sum of three thousand dollars.

Secondly. That the said Thomas, his heirs and assigns, shall pay to the said John Devereux the sum of ten thousand dollars, one moiety of which to be paid on the first day of March, A. D. 1841, and the other moiety one year thereafter; but it is understood that should the said John receive from the said Thomas, as administrator of the said George Pollok, any of the effects which were of the said intestate,
102 then the price thereof shall be deemed and taken in payment, or part payment, of the said sum of ten thousand dollars.

Thirdly. That the said Thomas P. Devereux, his heirs, or assigns, shall invest for, or pay to, the said Frances Devereux, at such times, in such proportions, and in such manner and form as she shall direct and require, to and for her own sole and separate use, and subject to her own disposal by will, deed, or writings in nature thereof, or otherwise, to all intents and purposes (notwithstanding her coverture) as if she were a

whom and to whom and for what, and whether any and what sums or sum of money do or doth now remain unpaid on account thereof;
97 and whether the said defendant hath not in his possession or power divers or some and what books, accounts, books of accounts, letters, copies of letters, and extracts of letters, memoranda and writings relating to the matters hereinbefore mentioned, or some or one and which of them, and that he may set forth a list or schedule thereof, and may produce the same according to the rules and practice of this court; and whether the said defendant hath now in his possession or power all such of the aforesaid particulars as at any time have or hath been in his possession or power, and if not, then that he may set forth what has become thereof, and in whose possession or power the same were when he last saw or heard of them respectively.

And that an account may be taken of the real and personal estate and effects of the said Frances Devereux possessed by or come to the hands of the said defendant, or to the hands of any other person or persons by his order or to his use, or which but for his wilful default or neglect might have been possessed or received by him, including said sum of fifty thousand dollars, and said annual sum of three thousand dollars, and also an account of the said Frances' funeral expenses, debts,
98 and legacies, and that the said Frances' real and personal estate may be applied to the payment thereof in a due course of administration, and that the residue and clear surplus thereof may be ascertained and your oratrixes' just share and proportion thereof decreed to be paid to them. And that your oratrixes have such further or other relief in the premises as the nature and circumstances of their case may require, and to your honors shall seem just.

May it please your honors to grant unto your orator and oratrixes a writ of subpœna, to be directed to the said Thomas P. Devereux, Leonidas Polk, and Frances Ann Polk, his wife, commanding them, and each of them, by a certain day and under a certain penalty therein to be inserted, to be and appear before your honors in said court, and then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience.

And your orators, as in duty bound, shall ever pray, &c.

FRANK G. Q. UMSTED.
ELIZABETH J. DEVEREUX UMSTED.
GEORGINA P. DEVEREUX.

Exhibit A, with amended bill.

Deed from John and Frances Devereux, his wife, to Thomas P. Devereux and his heirs, July 3rd, A. D. 1839.

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That whereas George Pollok, esq'r., late brother of the said Frances, hath recently departed this life, intestate, unmarried, and without issue, leaving the said Frances and the children of a deceased half-sister, on the part of his mother, his heirs at law; and was seized in fee-simple at the time of his death, of divers messuages, tracts, lots, and parcels

of land, situate in the counties of Orange, Halifax, Northampton, Martin, Bertie, Craven, Jones, and elsewhere in the State of North Carolina, of which land some had been transmitted by descent, and derived by gift, devise, or settlement to the said George from his paternal ancestors, and have now, by his death, descended upon the said Frances as the sole heiress of the said George, on the part of his father; and others of the said lands were purchased by the said George during his life, and now, by his death, have descended upon the said Frances and the said children of his said deceased sister, as tenants in common;
100 the said Frances entitled to one undivided moiety, and the said children, as representing their mother, together entitled to the other undivided moiety thereof; and whereas the said John and Frances are minded to settle and assure all the said lands and real estate which have so accrued to the said Frances, in the manner, and to and for the uses, and trusts, and purposes, hereinafter expressed and declared:

Now, therefore, in consideration of the premises and of one dollar by the said Thomas to the said John and Frances in hand paid, and for divers other good causes and considerations, they, the said John Devereux and Frances, his wife, have given, granted, bargained, and sold, and do, by these presents, give, grant, bargain, and sell, unto the said Thomas P. Devereux, and his heirs, all the said messuages, tracts, lots, and parcels of land situate in the counties above named or elsewhere, which, on the death of the said George Pollok, descended upon the said Frances as his only heiress on the part of his father, and also all the moiety, share, and portion of the said Frances in, of, and to all the said messuages, tracts, lots, and parcels of land situate in the said counties or elsewhere, which have descended upon the said Frances and the said children of the said deceased sister of the said George, as tenants
101 in common, together with all the right, title, interest, property, and estate of them, the said John and Frances, and each of them, of, in, and to the same, & all other the land and real estate whereso-ever situate, which were of the said George Pollok, at his death, to have and to hold the same, with the appurtenances, unto him, the said Thomas P. Devereux, his heirs and assigns, forever, upon and subject, nevertheless, to the following charges, uses, trusts, restrictions, directions, provisions, and limitations, that is to say:

First. That the said Thomas P. Devereux, and his heirs and assigns, shall, on the first day of March, in each and every year, during the life of the said Frances Devereux, pay to the said Frances, into her own hands, or according to her own order and to her sole and separate use, and subject to her own disposal, as if she were a feme-sole and unmarried, the yearly sum of three thousand dollars.

Secondly. That the said Thomas, his heirs and assigns, shall pay to the said John Devereux the sum of ten thousand dollars, one moiety of which to be paid on the first day of March, A. D. 1841, and the other moiety one year thereafter; but it is understood that should the said John receive from the said Thomas, as administrator of the said George Pollok, any of the effects which were of the said intestate,
102 then the price thereof shall be deemed and taken in payment, or part payment, of the said sum of ten thousand dollars.

Thirdly. That the said Thomas P. Devereux, his heirs, or assigns, shall invest for, or pay to, the said Frances Devereux, at such times, in such proportions, and in such manner and form as she shall direct and require, to and for her own sole and separate use, and subject to her own disposal by will, deed, or writings in nature thereof, or otherwise, to all intents and purposes (notwithstanding her coverture) as if she were a

feme-sole and unmarried, the sum of fifty thousand dollars; but if the said sum of money, or any part thereof, shall remain unpaid, or shall not be invested during her life, and if the said Frances shall not by deed or will, or writing in nature thereof, or by some other act give, grant, dispose, or direct any payment, investment, or application of the same, then the said sum of money, or so much thereof as shall remain not paid, given, granted, disposed, or directed to be invested, paid, or applied shall be considered as lapsing, and the charge therefor as extinguished for the benefit of the said Thomas.

Fourthly. That the said Thomas P. Devereux, his heirs or as-
103 signs, shall pay to Elizabeth Devereux and Georgina Devereux, infant children of the late George P. Devereux (son of the said John and Frances) by his wife Sarah Elizabeth, each, the sum of eleven thousand dollars, to be paid to them respectively on attaining full age, or marriage, with interest thereon after the first day of March, A. D. 1842, as follows, that is to say, for five years thereafter at the rate of three per centum per annum, and then afterwards at the usual rate of six per centum per annum, payable on the first day of March, in each and every year. And should one of the said children die unmarried and within age, then one moiety or half part of the said sum of money so directed to be raised for her shall be paid to the said Sarah Elizabeth, her mother, for her own use, if she shall be living at the death of such child, and the other moiety or half part shall lapse, and the charge thereof be extinguished for the benefit of the said Thomas; and in like manner, should the other of the said children die unmarried and within age, one moiety or half-part of her portion shall be paid to the said Sarah Elizabeth (if then living) for her own use, and the residue thereof shall lapse, and the charge be extinguished for the benefit of the said Thomas; and
104 should the event on which the said Sarah Elizabeth will become entitled to the moieties of the said sum, or either of them, happen after the first day of March, A. D. 1842, then the same shall be payable to her immediately; (if before) then on that day. But should it happen that at the death, unmarried and within age, of both or either of the said children, their mother shall not be alive, so as to take moiety of the portion or portions of such child or children, the whole thereof shall lapse, and the charge be extinguished for the benefit of the said Thomas. And it is hereby declared that the said Thomas, his heirs or assigns, may, at his or their discretion, anticipate the times for paying the said two sums of money, and may, before the sums or either them shall become due and payable, pay the whole or any part thereof to any person by law authorized to receive the same, on behalf of the said children or either of them. And as the said John and Frances have entire confidence in the said Sarah Elizabeth, it is hereby expressly declared that she may receive, and the said Thomas may make to her any payment, on account of her said children or either of them, and her receipts for any such payments, whether of principal or interest, shall be a full acquittance of the said Thomas.

105 Fifthly. That whereas the said Sarah Elizabeth, as the personal representative of her late husband, is indebted to Collin Clarke in the sum of six thousand dollars, the said Thomas is immediately to assume upon himself the said debt, to release her therefrom, and to pay the same.

Sixthly. That the said Thomas P. Devereux, his heirs and assigns, shall pay to Frances Ann Polk, wife of the Right Reverend Leonidas Polk, and daughter of the said John and Frances, the sum of fifty thousand dollars ($50,000), to be paid in equal annual instalments of five

thousand dollars, the first payment to be made on the first day of March, A. D. 1842 (one thousand eight hundred and forty-two), and the said Thomas shall be charged with interest on the said sum of fifty thousand dollars, and such portions thereof as may from time to time remain unpaid, as follows, that is to say: For five years from and after the first day of March, A. D. 1842, at the rate of 3 (three) per centum per annum, and thenceforward at the usual rate of six per centum per annum; provided always that the said Thomas P. Devereux may, at his discretion, pay and discharge the said sum of money, or any part thereof, or any instalment or part thereof, from time to time, and at any time before the same shall become payable; and provided
106 also, and it is hereby declared and directed, that one moiety or half-part of the said sum of fifty thousand dollars shall be paid into the proper hands of the said Frances Ann Polk, or otherwise be vested, held, or disposed of to and for the sole and separate use of the said Frances Ann, without being in any manner subject to any charge, release, assignment, or control of her present or any future husband, nor to pass to nor vest in the personal representative of such husband, but to be in all respects subject to her order or disposal, and to pass, at her death, if then undisposed of, as if she were a feme sole and unmarried; and provided further, and it is hereby directed, that, should the said Leonidas and Frances Ann, at any time on or before the first day of March, A. D. 1841, elect to take lands instead of the said sum of fifty thousand dollars, and also to take negroes instead of a like sum directed to be raised for the said Frances Ann by deed (bearing even date with these presents, from the said John Devereux to the said Thomas P. Davereux, as will appear by reference thereto), and notify the said Thomas of such election to take lands and slaves instead of the said two sums of money; or should the said Thomas, on or before the said first day of March, A. D. 1841, elect, and notify the said Leonidas and Frances Ann of his election, to give lands and slaves instead
107 of the said two sums of money, then, on the first day of January, A. D. 1842, there shall be allotted for the said Frances Ann Polk, in fee-simple, a share or portion of the lands hereby conveyed and assumed of the full value of fifty thousand dollars, and the legal title of the same shall be made to or for the said Frances Ann, and the charge for the said money shall thereby cease and determine; and of the lands so allotted or conveyed for the said Frances Ann, one moiety in value shall be properly assured to her sole and separate use and subject to her own disposal, as if she were a feme sole and unmarried, free from all control or interest of her present or any future husband.

Seventhly. That, should the personal estate of the said George Pollok prove insufficient to pay and satisfy all his just debts, and by reason thereof there should remain any debt or debts of the said George Pollok properly chargeable on his real estate, the said Thomas shall pay and satisfy the proportion thereof which ought justly to be borne by the lands descended to the said Frances Devereux, and hereby conveyed to the said Thomas. And the said John and Frances Devereux do hereby declare all the foregoing sums of money, payments, and duties directed to be paid and discharged, to be express charges and liens upon the real estate hereby assured, and subject thereto, and of the
108 performance and satisfaction thereof, they, the said John and Frances Devereux, do hereby declare that he, the said Thomas, his heirs and assigns, shall hold all the lands and real estate hereinbefore described and granted upon, and to the uses, trusts, and purposes

following, that is to say: Upon trust for his own use and benefit during his natural life, and no longer, and, from and after his death, upon trust for the payment and satisfaction, and to stand charged with the payment and satisfaction of all and every the just debts which the said Thomas may owe at the time of his death, and subject thereto upon trust for any one or more of the children (born or to be born) of the said Thomas, their wives or husbands, for such estates, upon such trusts, to such uses, and subject to such charges, conditions, and restrictions as he, the said Thomas, shall, by deed or will, direct, limit, and appoint; and should the said Thomas make an appointment to or in favor of more than one of his children, sons-in-law or daughters-in-law, it is hereby declared that they shall take in such proportions in all respects as he shall declare, and that no disproportion of value shall be deemed or taken (however great such disproportion may be) to make the said appointment illusory, or in any manner to defeat the same, but that his power shall be absolute and without restriction to appoint the whole to one in exclusion of the
109 residue, to some in exclusion of the residue, or to all—and if to more than one or to all, then with such difference as he may please to make between them, though to some he should appoint a mere nominal portion or value—and in default or for want of any such appointment, then upon trust for the children of the said Thomas, who shall survive him, and their heirs, share and share alike, in fee-simple; and should any child of the said Thomas die during the life of the said Thomas, leaving issue which shall survive the said Thomas, such issue shall stand in the place of such child, and take the portion or share that would by such child have been taken upon his or her surviving the said Thomas. And it is further declared, that the issue of any child of the said Thomas shall (after the death of such child) be deemed and taken to all intents and purposes to be within the power of appointment above given to the said Thomas. And, whereas, it will be necessary to make partition of the said lands and real estate held in common, as above stated; and, whereas, it may be beneficial to both the parties to the said partition to make exchanges by assigning lands, which descended upon the said Frances solely, to the said children of the said deceased sister of the said Pollok, and to receive instead thereof lands so held in common, and to make other arrangements (which can-
110 not be foreseen and specified) in order to give as far as possible to the parties to the said partition, respectively, allotments of land compact and convenient: It is, therefore, hereby declared and provided, that the said Thomas P. Devereux (with the assent of the said John and Frances, during their lives, and absolutely, and at his sole will and discretion after their death) shall have full power to make such partition, in such manner as he may deem most suitable, proper and convenient, to exchange lands of which the said Frances is sole seized, for lands held in common as aforesaid, and in all other respects to settle and arrange the said partition as he shall deem best, and what he shall so do, settle and arrange, shall be absolutely and to all purposes binding, as if he were the owner of the whole in fee-simple, without being subject to any trust, use or charge whatever, but he shall hold any lands which he may acquire by such exchanges or other arrangements upon the trusts hereinbefore declared. And it is further declared that the said Thomas, his heirs and assigns, shall have power, in order to raise any of the sums of money herein directed to be paid, to sell any parts or portions of the lands hereby granted. And, whereas, circumstances which cannot be foreseen, and expressly provided for, may

make it expedient, that the said lands and real estate (after all
111 the above charges have been paid, satisfied, and extinguished) should be charged with debts, or be exchanged, sold, and disposed of, and the proceeds otherwise invested upon the trusts aforesaid; therefore, it is expressly declared, that the said Thomas P. Devereux shall have ample and full power and authority from time to time, and at all times, at his own will and pleasure, by any proper deeds or assurances, to charge with the payment of any just debt or debts of the said Thomas, or to grant, sell, and exchange all or any part of the said lands and real estate, and to invest the proceeds of such sale or sales in other funds, real or personal, he, the said Thomas, holding any lands which he may acquire by exchange, and any funds, real or personal, in which he may make any such investment, upon the trusts, and with the power herein declared, touching the lands which he may so grant, sell, or exchange, and any and every such grant, sale, exchange, and disposition shall pass the title discharged of any use or trust hereby declared for any the family of the said Thomas.

In witness whereof the said John Devereux and Frances, his wife, and the said Thomas P. Devereux have hereunto set their hands and seals the day and year first above written.

JOHN DEVEREUX. [SEAL.]
FRANCES DEVEREUX. [SEAL.]
T. B. DEVEREUX. [SEAL.]

112 Signed, sealed, and delivered (erasures and interlineations first made) in presence of—
GEORGE E. BADGER.

Probate of deed.

STATE OF NORTH CAROLINA, *ss:*

Be it remembered that this day at the city of Raleigh, before me, William Gaston, and one of the judges of the supreme court, personally appeared John Devereux and Frances Devereux, his wife, the grantors in the foregoing deed of conveyance from them to Thomas P. Devereux, and acknowledged the due and legal execution thereof as their act and deed for the purposes therein declared. And the said Frances Devereux being thereupon privately examined by me, separate and apart from her said husband, touching her free consent in executing the said conveyance, she, on such examination, declared that she had executed the same freely and of her own will and accord, without any force, fear, threats, or other undue influence of her said husband, or any other person, and did still voluntarily assent thereto. And the said Thomas P. Devereux, also on the same day, and at the same place, before me, acknowledged the execution by him of the said deed of conveyance.

Let it be registered, July 3rd, 1839.

WILLIAM GASTON.

Certificate of registration of deed.

This deed was registered March 9th, 1848.

SAMUEL CALVERT, P. R.,
Jackson, Northampton County, North Carolina.

113 *Exhibit B with amended bill.*

Frances Devereux's will, dated the 23rd day of December, A. D. 1847.

In the name of God, amen. I, Frances Devereux, in the State of

North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby to execute all powers vested in me and enacted in any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself. And I would here declare, that my only hope of a glorious resurrection is in the atonement made for sin by my Saviour Jesus Christ, and acknowledge my best works are utterly unworthy of acceptance fur' than as proofs of my faith. I cast them from me, and cling to the righteousness of my Saviour as my plea at the bar of Him who searcheth the heart.

As it has pleased God to bestow a competence on my descendants, and as my prayer has ever been that they might be saved from the temptations which accompany wealth, I feel at liberty to aid in
114 extending the kingdom of Him who hath redeemed my soul from the lowest pit of destruction, and assist those engaged in enlightening the ignorant.

ITEM 1ST.—I give and bequeath to the "Trustees of the Caldwell Institute" and to their successors and assigns (the said Caldwell Institute being at present located in the town of Hillsboro', Orange County, North Carolina, and having been incorporated by the legislature of North Carolina) the sum of four thousand dollars, which sum shall remain in the hands of Thomas P. Devereux for five years from the time of my death, he paying the interest accruing annually, or semi-annually, as required during that period. The interest alone of said sum to be applied to the payment of the salaries of the professors or instructors in said institute, wherever it may be located, provided it be within the said State of North Carolina.

ITEM 2ND.—I give and bequeath to Clement C. Read, of the county of Prince Edward, in the State of Virginia, and his executors, administrators, and assigns, the sum of four thousand dollars in trust, for the benefit of the "Union Theological Seminary," located in said county of Prince Edward, to be paid over by him to the order of such persons as may compose the board of directors of said seminary whenever the sum shall be received by him, which sum shall be appropriated to
115 the endowment of an additional professorship in said seminary. And until said endowment be completed, the interest annually arising from said sum shall be added to the principal, or else applied to aid in the payment of the salary of any professor or instructor not already adequately provided for.

ITEM 3RD.—I give and bequeath to the trustees of the board of education of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of four thousand dollars, to be applied by said board to the education of indigent pious young men for the gospel ministry; but of the principal of this sum, only five hundred dollars shall be used in any one year.

ITEM 4TH.—I give and bequeath to my executors and the survivors of them, and the executors, administrators, and assigns of the survivors of them the sum of four thousand dollars, in trust, to pay over the same to the person who, when the same shall be payable, shall act as treasurer of the "Board of Foreign Missions of the Presbyterian Church in the United States of America," to be applied to the uses and purposes of said board and under its direction, and the receipt of said treasurer

shall be a full receipt and acquittance of my said executors for the same. But of the principal of this sum, only one thousand dollars shall be used in any one year.

ITEM 5TH.—I give and bequeath to the trustees of the "Board
116 of Missions of the General Assembly of the Presbyterian Church in the United States of America," and to their successors and assigns, the sum of four thousand dollars, to be held by the said trustees and their successors forever, to and for the uses, and under the direction of the said board of missions, of the said general assembly, according to the provisions of their charter, to be appropriated to domestic missions, and only one thousand dollars of the principal to be used in any one year for that purpose.

ITEM 6TH.—I give and bequeath to my executors and the survivors of them the sum of five hundred dollars, in trust, for the benefit of the "Raleigh Female Benevolent Society," which sum shall be loaned out, or vested in some productive stock, and the proceeds thereof alone applied annually or semi-annually in the payment of the salary of the teacher of the school under the care of said benevolent society, provided the said society shall raise a sum annually which, added to the proceeds of the above five hundred dollars, shall be sufficient to support a teacher, or if said society should cease to exist, then the proceeds of the above five hundred dollars shall be applied to the payment of a colporteur to supply religious publications in some destitute part of North Carolina.

ITEM 7TH.—It is my will that all my negroes who, at the time of my death, shall be in possession of my grandson, John Devereux, in
117 Bertie County, shall be kept together after my death until they have secured the crop on the ground at that period. At the expiration of that time my highly esteemed son-in-law, Right Reverend Leonidas Polk, is to select as many families of said negroes as he wishes; these he is to take at a valuation, giving bonds for the same, payable in ten annual instalments, but as I know he is at a great expense to promote the spiritual improvement of his slaves, I desire the expense attending their removal to be paid by my estate. Should John Devereux take any of said negroes, the same terms will be required as in the case of said Leonidas Polk.

ITEM 8TH.—I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs, and assigns, the sum of seven thousand five hundred dollars, in trust, for the following purposes:

First, to Miss Louisa Taylor, daughter of M'r's Eliza Taylor, fifty dollars annually during her natural life.

Secondly, to Miss Ellen Anderson, who was brought up by my friend M'r's Mary Jones, the sum of fifty dollars per annum during her natural life.

Thirdly, to M'r's Elizabeth Kunis, now residing in the town of Newbern, in the State of North Carolina, an annuity of fifty dollars, to be paid annually to Thomas Sparrow, es'q'r, of the said town of Newbern, for the benefit of said Elizabeth Kumis during her natural life.

Fourthly, to two girls at the Mission School in Ceylon, who bear
118 the names of Catharine Ann Devereux and Frances Ann Polk, forty dollars per annum, to be paid annually to the secretary of the "American Board of Commissioners for Foreign Mission'," for their support at the said Mission School.

Fifthly, to the Reverend Theron Baldwin, corresponding secretary of the Society for Promoting Collegiate and Theological Education at the West, or to his successors in office, one hundred and twenty dollars per

annum, to be applied by him in the cause of female education in the West, or valley of the Mississippi, the object being to prepare pious Protestant females for teachers in that part of our country.

Sixthly, to Thomas P. Devereux, one hundred and forty dollars per annum, to aid in supporting a teacher (should he think fit to employ one) to give religious instructions to the slaves on the Roanoke River, particularly those in the possession of my descendants.

ITEM 9TH.—It is my will that the house and lot in Chapel Hill, purchased of Sidney Barber, be disposed of as my executors may deem best. If sold upon credit, a mortgage must be taken upon the property until payment is made, which payment is to be vested in some productive stock.

ITEM 10TH.—From the funds arising from the sale of the above slaves and the house and lot in Chapel Hill it is my will that at the death of M'r's Eliza Taylor, her daughter, Louisa, shall receive the further
119 sum of one hundred and fifty dollars annually during her natural life; or should the said Eliza Taylor, by and providential visitation be rendered incapable of teaching school, or arrive at the age of sixty years, then, in either of these contingencies, the said Louisa Taylor shall receive the above-mentioned sum of one hundred and fifty dollars per annum during her natural life, over and above the sum of fifty dollars per annum heretofore provided for her. The same to be paid the said Louisa Taylor by my executors annually.

ITEM 11TH.—I give and bequeath to Jesse Brown, George Simpson, Seymour W. Whiting, and William J. Clarke, trustees of the Presbyterian Church or Society in the city of Raleigh, or to their successors in office, five negroes, viz.: Tom, Viney, Priscilla, and her sons, George and Henry, with their increase, in trust, to be used or employed by the pastor of said church as he may direct. But should said church or congregation, in process of time, fail to adhere to the doctrine, order, and form of church government set forth in the confession of faith of the "Presbyterian Church in the United States of America," then in that case I direct that the said negroes and their increase shall return to my executors to be distributed according to law; and further it is my will that if the said church or congregation shall at any time fail to
120 raise annually, as the salary of the pastor or minister, the sum of six hundred and fifty dollars, exclusive of the avails of said negroes given for the benefit of the pastor, then and in that case the bequest of said negroes shall be void, and the said negroes and their increase shall return to my executors and be distributed according to law. It is my will that the said negroes, if hired out, should have a choice of masters, subject to the approval of the pastor of the church, and that they should not be publicly hired out.

ITEM 12TH.—I give and bequeath to S. S. Souter, of the borough of Norfolk, and State of Virginia, to his executors, administrators, and assigns, the sum of five hundred dollars, in trust nevertheless for the association known by the name of the "Seamen's Friend Society" of said borough, the said sum of five hundred dollars to be disposed of so as to promote the welfare of that society. In case the above sum shall be given to said society before my death, then this bequest to be void.

ITEM 13TH.—I give and bequeath to Elizabeth Lacy, daughter of the Reverend Drury Lacy, at present residing in the city of Raleigh, a servant-girl named Sarah, the daughter of Priscilla, now about seven years old, the said Sarah to remain with her mother until she is a proper age to be taken from her.

121 ITEM 14TH.—In consideration of the faithful services of my

female servant Evelina, it is my will that at my death she shall be sold to such a person as she may choose for her master, and that my executors shall make and execute a good and sufficient title to the said Evelina to such person, upon his executing a bond, with good and sufficient security, conditioned to pay and expend the sum of fifty dollars annually for the period of four years, which is to be expended in employing some suitable person to distribute tracts and religious books in the most destitute portions of the counties, Nash, Wayne, and Johnston, and if the said persons elected shall fail to perform the consideration of the bond before mentioned, then the sale to be void, and the servant girl Evelina is to make a second choice, and so on until the same shall be effected and my wishes complied with.

ITEM 15TH.—It is my wish that my servant girls Rebecca, Delia, and Sally, shall be sold to some person or persons residing within the limits of the State of North Carolina, and that the said servants shall not be sold at public sale, but at private sale (and only to those who intend to retain them as domestics), the price to be fixed by some discreet person or persons; my object being that they shall have masters who will treat them properly, and not take them out of the State.

122 ITEM 16TH.—Should my debts, at my decease, not exceed two thousand dollars, I give my carriage and horses to my beloved son, Thomas P. Devereux; if otherwise, it is my will and desire, that my executor should sell all the stock of horses, cattle, hogs, &c., crops, and farming-utensils, and any personal property I may have in the possession of my grandson, John Devereux (negroes excepted), also my carriage and wagons or any other property of the same description, and pay all my debts; and should the said property be found insufficient to pay the debts, then it is my will and desire that the negroes which may be in the possession of my grandson, John Devereux, at the time of my death, shall be hired out, and the proceeds applied to the payment of the balance until the same shall be fully paid and satisfied, unless my grandson and son-in-law should arrange the payment of the same in some other manner, and take the negroes into their possession. Should it appear at my decease that the bequests exceeded the amount of funds left, my will is, that the first five only shall be curtailed until brought within the limit of the assets. It is my further will and desire, and I do so direct and appoint, that if any one or more of the legacies hereinbefore given or intended to be given by me, should fail

123 to take effect through any informality, or from any other cause, that then the sum so failing shall be added to, and from a part of the other legacies which shall be lawful and valid.

I do hereby constitute and appoint Frederick Nash, senior, Thomas P. Devereux, John Primrose, and William D. Cooke my lawful executors, to execute this my last will and testament, according to the true intents of the same; and having full confidence in the integrity and fidelity of my executors, I desire they may be exempted from the necessity of giving security for the execution of the duties and trusts hereby to them committed.

In witness of all of which I, the said Frances Devereux, do hereunto set my hand and seal this (23rd) twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-seven, praying that Almighty God in his good providence and great mercy would so overrule and direct, and care for the several bequests herein made, that thereby his own glory and the good of His church may be promoted.

FRANCIS DEVEREUX. [SEAL.]

Signed, sealed, published, and declared by the said Frances Devereux, to be her last will and testament, in the presence of us and in presence of each other, do at her request subscribe our names as witnesses thereto.

124 D. DU PRE.
GEORGE SIMPSON.

Exhibit C with amended bill.

Frances Devereux's will, dated the 20th day of August, A. D. 1848.

In the name of God, amen, I, Francis Devereux, in the State of North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby also to execute all powers vested in me and exacted in any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself. And I would hereby declare that my only hope of a glorious resurrection is in the atonement made for sin by my Saviour Jesus Christ, and acknowledge my best works are utterly unworthy of acceptance farther than as proofs of my faith. I cast them from me and cling to the righteousness of my Saviour as my plea at the bar of Him who searcheth the heart.

As it has pleased God to bestow a competence on my descendants, and as my prayer has ever been that they may be saved from the
125 temptations which accompany wealth, I feel at liberty to aid in extending the kingdom of Him who hath redeemed my soul from the lowest pit of destruction, and assist those engaged in enlightening the ignorant.

ITEM 1ST.—I give and bequeath to the trustees of the Caldwell Institute, and to their successors and assigns (the said Caldwell Institute being at present located in the town of Hillsboro', Orange County, North Carolina), the sum of two thousand dollars, which sum shall remain in the hands of Thomas P. Devereux for five years from the time of my death, he paying the interest accruing annually or semi-annually, as required, during that period, the interest alone of that sum to be applied to the payment of the salaries of the professors or instructors of said institute, wherever it may be located, provided it be within the State of North Carolina.

ITEM 2ND. I given and bequeath to Clement C. Read, of the county of Prince Edward, in the State of Virginia, and his executors, administrators, and assigns, the sum of two thousand dollars, in trust for the benefit of the "Union Theological Seminary," located in said county of Prince Edward, to be paid over by him to the order of such persons as may compose the board of directors of said seminary, whenever the sum shall be received by him, which sum shall be appropriated
126 to the endowment of an additional professorship in said seminary, and until said endowment be completed, the interest annually arising from said sum shall be added to the principal, or else applied to aid in the payment of the salary of any professor or instructor not already adequately provided for.

ITEM 3RD.—I give and bequeath to the trustees of the Board of Education of the Presbyterian Church of the United States of America,

and to their successors and assigns, the sum of two thousand dollars, to be applied by said board to the education of indigent pious young men for the gospel ministry, but of the principal of the sum five hundred dollars only shall be used in any one year.

ITEM 4TH.—I give and bequeath to my executors, and the survivors of them, and the executors, administrators, and assigns of the survivors of them, the sum of two thousand dollars, in trust, to pay over the same to the person who, when the same shall be payable, shall act as treasurer of the Board of Foreign Missions of the Presbyterian Church in the United States of America, to be applied to the uses and purposes of said board, and under its direction, and the receipt of said treasurer shall be a full receipt and acquittance of my said executors for the same. But of the principal of this sum only five hundred dollars shall be so used in any one year.

127 ITEM 5TH.—I give and bequeath to the trustees of the Board of Missions of the General Assembly of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of two thousand dollars, to be held by said trustees and their successors forever, to and for the uses and under the direction of said board of missions of the said general assembly, according to the provisions of their charter, to be appropriated to the domestic missions, and only five hundred dollars of the principal to be used in any one year for that purpose.

ITEM 6TH.—I give and bequeath to my executors, and the survivors of them, the sum of five hundred dollars, in trust for the benefit of the "Raleigh Female Benevolent Society," which sum shall be loaned out or vested in some productive stock, and the proceeds thereof alone applied annually or semi-annually in the payment of the salary of the teacher of the school under the care of said Benevolent Society, provided the said society shall raise a sum annually, which, added to the proceeds of the above five hundred dollars, shall be sufficient to support a teacher, or, if said society should cease to exist, then the proceeds of said five hundred dollars shall be applied to the payment of a colporteur to supply religious publications in some destitute part of North Carolina.

128 ITEM 7TH.—It is my will that all my negroes, who, at the time of my death, shall be in the possession of my grandson, John Devereux, in Bertie County, shall be kept together after my death until they have secured the crop on the ground at that period. At the expiration of that time my highly-esteemed son-in-law, Right Reverend Leonidas Polk, is to select as many families of said negroes as he wishes; these he is to take at a fair valuation, giving bonds for the same, payable in ten annual instalments; the remainder of these negroes to be offered to my grandson, John Devereux, on the same terms before mentioned in the case of Reverend Leonidas Polk, to whom my executors shall pay the sum of five hundred dollars for the removal of his lot of negroes.

ITEM 8TH.—I give and bequeath to my beloved son, Thomas P. Dev ereux, and to his executors, heirs, and assigns, the sum of seven thousand five hundred dollars, in trust for the following purposes:

First, to Miss Eliza Taylor, daughter of M'r's Eliza Taylor, fifty dollars annually during her natural life.

Secondly, to Miss Ellen Anderson, who was brought up by my friend M'r's Mary Jones, the sum of fifty dollars annually during her natural life.

Thirdly, to M'r's Elizabeth Kunis, now residing in the town of N ew bern, in the State of North Carolina, an annuity of fifty dollars, to-

129 be paid annually to Thomas Sparrow, esqr., of said town of Newbern, for the benefit of said Elizabeth Kunis during her natural life.

Fourthly, to two girls at the mission school in Ceylon, who bear the names of Catharine Anne Devereux and Frances Ann Polk, forty dollars per annum, to be paid annually to the secretary of the American Board of Commissioners for Foreign Missions for their support at said mission school.

Fifthly, to the Reverend Theron Baldwin, corresponding secretary of the Society for Promoting Collegiate and Theological Education at the West, or to his successors in office, one hundred and twenty dollars per annum, to be applied by him in the cause of female education in the West, or Valley of the Mississippi, the object being to prepare pious Protestant females for teachers in that part of our country.

Sixthly, to Thomas P. Devereux, one hundred and forty dollars per annum to aid in supporting a teacher (should he think fit to employ one) to give religious instructions to the slaves on the Roanoke River, particularly those in the possession of my descendants.

Should all or any of said annuities or charities lapse, in consequence of the death of the person or persons to whom they should be paid; should the said Society for Promoting Collegiate and Theological Education at the West fail, in process of time, to carry out its specified object; and should the said Thomas P. Devereux not employ a
130 teacher as above stated, then it is my will that my executors and the survivors of them pay over such sum or sums to the individual whom the Presbytery of Orange shall appoint to receive the same, which amount shall be employed by said Presbytery of Orange for the extension of the Redeemer's kingdom in any way which that body shall deem best.

ITEM 9TH.—It is my will that the house and lot in Chapel Hill, purchased of Sidney Barber, be disposed of as my executors deem best; if sold upon credit, a mortgage must be taken upon the property until payment is made, which payment is to be vested in some productive stock.

ITEM 10TH.—From the funds arrising from the sale of the negroes above mentioned, and the house and lot in Chapel Hill, it is my will that at the death of M'r's Eliza Taylor, her daughter Louisa shall receive the further sum of one hundred and fifty dollars annually during her natural life; or, should the said Eliza Taylor, by any providential visitation, be rendered incapable of teaching school, or arrive at the age of sixty years, then, in either of these contingencies, the said Louisa Taylor shall receive the above-mentioned sum of one hundred and fifty dollars per annum during her natural life over and above the sum of fifty dollars per annum heretofore provided for her; the same to be paid to the said Louisa Taylor by my executors annually.

131 ITEM 11TH.—I give and bequeath to Jesse Brown, George Simpson, Seymour W. Whiting, and William J. Clark, trustees of the Presbyterian church or society in the city of Raleigh, or to their successors in office, five negroes, viz, Tom, Viney, Prescilla and her sons, George and Henry, with their increase, in trust to be used or employed by the pastor of said church as he may direct; but should said church or congregation, in process of time, fail to adhere to the doctrine, order, or form of church government set forth in the confession of faith of the Presbyterian church in the United States of America, then, in that case, I direct that the said negroes and their increase shall return to my executors to be distributed according to law; and further, it is my will

that if the said church or congregation shall at any time fail to raise annually, as the salary of the pastor or minister, the sum of six hundred and fifty dollars, exclusive of the avails of said negroes given for the benefit of the pastor, then, and in that case, the bequest of said negroes shall be void, and they, the said negroes, with their increase, shall return to my executors and be distributed according to law. It is my will that the said negroes, if hired out, should have a choice of masters, subject to the approval of the pastor of the church, and that they should not be publicly hired out.

132 ITEM 12TH.—I give and bequeath to S. S. Souter, of the borough of Norfolk, and State of Virginia, to his executors, administrators and assigns, the sum of five hundred dollars, in trust nevertheless, for the association known as the Seaman's Friend Society of said borough, the said sum of five hundred dollars to be disposed of so as to promote the welfare of that society. In case the above sum shall be given to said society before my death, then this bequest is to be void.

ITEM 13TH.—I give and bequeath to Elizabeth Lacy, daughter of Reverend Drury Lacy, at present residing in the city of Raleigh, a servant girl named Sarah, the daughter of Priscilla, now about seven years of age, the said Sarah to remain with her mother until she is a proper age to be taken from her.

ITEM 14TH.—In consideration of the faithful services of my female servant Evelyna, it is my will that at my death she shall be sold to such person as she may choose for her master, and that my executors shall make and execute a good and sufficient title to the said Evelyna to such person, upon his executing a bond, with good and sufficient security, conditioned to pay and expend the sum of fifty dollars annually for the period of four years, which is to be expended in employing some suitable person to distribute tracts and religious books in the most

133 destitute portions of the counties of Nash, Wayne, and Johnston; and if the said person selected shall fail to perform the consideration of the bond before mentioned, then the sale to be void, and the servant girl Evelyna is to make a second choice, and so on until the same shall be effected and my wishes complied with.

ITEM 15TH. It is my wish that my servant girls, Rebecca and Delia, shall be sold to some person or persons residing within the limits of the State of North Carolina, and that the said servants shall not be sold at public sale (and only to those who intend to retain them as domestics), the price to be fixed by some discreet person or persons, my object being to keep them near their relatives.

ITEM 16TH. It is my will and desire that my executors should sell all the stock of horses, cattle, and hogs, &c., crops and farming utensils, and any personal property I may have in the possession of my grandson, John Devereux, (negroes excepted). Also, my carriage and wagon, or any other property of the same description, and pay all my debts. And should the said property be found insufficient to pay the debts, then it is my will and desire that the negroes, which may be in the possession of my grandson, John Devereux, at the time of my death, shall be hired out and the proceeds applied to the payment of the balance, until the same shall be fully paid and satisfied, unless my

134 grandson and son-in-law should arrange the payment of the same in some other way, and take the negroes into their possession. Should it appear at my decease that the bequests exceed the amount of funds left, my will is that the first five only shall be curtailed, until brought within the limits of the assets. It is my further will and desire, and I do so direct and appoint, that if any one or more of the

legacies hereinbefore given, or intended to be given by me, should fail to take effect through any informality, or from any other cause, that then the sum so failing shall be added to and form a part of the other legacies, which shall be lawful and valid.

I do hereby constitute and appoint Frederick Nash, senior, Thomas P. Devereux, John Primrose, and W'm D. Cooke my lawful executors to execute my last will and testament according to the true intents of the same; and, having full confidence in the integrity and fidelity of my executors, I desire they may be exempted from the necessity of giving security for the execution of the duties and trusts hereby to them committed.

In witness of all which, I, the said Frances Devereux, do hereunto set my hand and seal this twentieth day of August, A. D. 1848.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
W'M J. CLARKE.
CATHARINE E. FULLER.

135 *Codicil.*

Since the execution of my last will and testament, I have concluded to make certain alterations and amendments thereto as contained in the following codicil, which I do hereby constitute a part of my said will, to take effect and be construed as such.

ITEM 1ST. Should my son in-law, Reverend Leonidas Polk, take families of my negroes, according to item 7th of my last will and testament, then it is my desire furthermore, that out of the interest due annually on his bonds given for said negroes, he retain one hundred and fifty dollars per annum, to be expended for the religious instructions of the negroes, after their removal from this State. And furthermore, if the settlement of my estate will allow of further indulgence, then it is my wish that the said Reverend L. Polk be not pressed to pay the installments, but be allowed to pay them in his own time, or at such periods as will best suit his convenience.

ITEM 2ND. Having learned that D'r Simmons J. Baker does not intend to remove from this State, I hereby name and appoint him, together with my respected son-in-law, the Reverend Leonidas Polk, as executors to my last will and testament, in addition to those gentlemen heretofore named and appointed.

ITEM 3RD. The religious instruction of the slaves on the Roanoke River being a matter which I greatly desire to promote, I hereby
136 earnestly request my executors to secure the services of an efficient, competent clergymen, who will be willing to itinerate up and down the river, and preach at the different plantations; and I hereby authorize them to pay said clergyman a liberal allowance for his services during eight months of the year. It is furthermore my wish that he be supplied annually with the publications of the American Tract Society, for gratuitous distribution among the families of that region of country.

ITEM 4TH. I give and bequeath to the American Tract Society, instituted in the city of New York, one thousand dollars, to be applied to the charitable purposes of said society.

ITEM 5TH. Some time ago I made an arrangement by which I hoped to secure the payment of two hundred dollars a year to M'r's Elizabeth Chester, of Weathersfield, Connecticut, for four years, the first payment to be made December the 20th, A. D. 1848. Should any unforeseen

circumstance prevent the remittance of said sum of two hundred dollars per annum for four years, it is my desire that my executors make that amount good to M'r's Chester for that time; after which she is to receive from them one hundred and fifty dollars per annum during her life.

ITEM 6TH. To my esteemed pastor, the Reverend Drury Lacy, I give and bequeath the sum of fifty dollars for the purpose of making
137 additions to his library, which is independent of the pastor's library. And whereas, in the body of my will I have given to his daughter Betsey, a girl named Sarah, and I now see fit to dispose of said girl Sarah otherwise, I give and bequeath to said Betsey, in her place George, son of my servant Prescilla.

ITEM 7TH.—In the body of my will I have given to the school under the care of the Female Benevolent Society, the sum of five hundred dollars; in addition to which I hereby bequeath to it my servant-girl Sarah, who is to be left entirely at the disposal of M'r's Colburn until she is twelve years old; after which she is to be hired, and the profits of her labor given to the school, provided the annual subscription from the ladies of the town amounts to the sum of one hundred dollars; in case it does not, then it is my will that said Sarah, and the interest of the five hundred dollars, be employed in educating some girl as a teacher, who is to be chosen by those ladies who were last officers of the Female Benevolent Society.

ITEM 8TH.—I give and bequeath to M'r Henry Hardie, son of M'r's Marion Hardie, of this city, the sum of three hundred dollars, to aid him in getting a theological education at Princeton, New Jersey, which sum is to be placed in the hands of M'r John Primrose, to be paid to the said Henry Hardie as his necessities may require. Should this
138 donation lapse in consequence of the death of said Henry Hardie, then it is my will that the above amount be applied to certain sabbath-schools in destitute places, or to aid in supporting colporteurs.

ITEM 9TH.—Having learned that my daughter-in-law, M'r's S. E. Devereux, declines taking my servant Eveline, who wishes to be sent to her it is my wish that said Eveline be placed under the care of some lady going to Philadelphia; she is then to be left free to remain in said city; or if she wishes to return it is my wish that my executors shall pay her expenses back to this place, where she shall be sold under the following provisions, to wit: Having chosen an owner, she shall be valued by competent persons, and then sold for one hundred less than such valuation, the purchaser giving bond for the payment of one hundred dollars annually until the whole price is paid, which sum I wish expended each year in the manner designated in item 14th, of my last will and testament.

ITEM 10TH.—Should Judge Nash accede to my proposal, it is my wish that his drafts be honored, without security, to the amount of five hundred dollars, no interest being required of him for four years.

ITEM 11TH.—As my grandchildren attain the age of fourteen years, I desire that each of them may be furnished by my executors with
139 a copy of the Holy Scriptures, with Scott's or Henry's commentary; also Dwight's life of my grandfather, J. Edwards Wilberforce's practical view of religion, Newton's works, Mason on self-knowledge, the great change by Redford, and Mason's spiritual treasury. I wish these works to be of the largest sizes and best editions—London copies if they can be procured.

ITEM 12TH.—With respect to the girls at the mission school in Ceylon

the annuities cannot lapse, for a successor is selected, who takes the name and privileges of the girl removed.

ITEM 13TH.—I give and bequeath to my ever dutiful son, Thomas P. Devereux, my brother's portrait and the miniature likeness of his father.

ITEM 14TH.—To my beloved daughter, Frances A. Polk, I give the miniature of my mother, the portrait of M'r's Polk in crayon, the large Bible in two volumes, once belonging to my mother; a small silver teapot, made for my father; a spoon and fork commonly used by my brother, the small open spoon with a pointed handle, four pitchers of a fox-chase, a chest of drawers, an old-fashioned, heavy, round mahogany table at the plantation, and a pair of old lamps also at the plantation.

ITEM 15TH.—To M'r's Sarah E. Devereux, I give the chandeliers which were brought from France by my brother.

ITEM 16TH.—To Hamilton Polk I give the portrait of his father.

140 ITEM 17TH.—To Frances Polk I give the portrait of her mother.

ITEM 18TH.—To Frances J. Miller I give a silver teapot, cream-pot, sugar-bowl, and tongs; six dessert spoons, and six teaspoons, in trust for her daughter Catharine, should said daughter survive her mother.

ITEM 19TH.—To Catharine Edmondston the brussels carpet, if she thinks it worth calling for.

ITEM 20TH.—Should William G. Clarke go to housekeeping in this State, my granddaughter, Mary B. Clarke, is at liberty to take any articles of household or kitchen furniture as she may wish, except such as I have otherwise disposed of. Should William G. Clarke not become a resident of this State, my will is, that William D. Cooke, of this place, shall have the liberty which was given to Mary B. Clark, and also that the few articles loaned him by me be considered as his property.

ITEM 21ST.—I give to my granddaughter, Honoria Cannon, the table-spoons marked "N. D.," two ladles marked "A. B. P.," the salt cellars, and all my household linen, except such as I otherwise disposed of, and a set of dimity curtains in the room which I now occupy.

ITEM 22ND.—To Mary B. Clarke I give my plated ware, all my glass-ware, and the best marseilles quilt.

ITEM 23RD.—To M'r's Eliza Primrose I leave the chair covered by herself, together with the tidy presented to me by Miss Parmlee.

ITEM 24TH.—From my apparel I wish my granddaughter,

141 Frances J. Miller, and M'r's Primrose, to select such articles as they may deem proper to send to M'r's McPheeter's, my common dresses to be sent to E. Kunis, of Newbern, my cloak, bombazine dress, and two summer dresses to M'r's Goodwin, as tokens of affectionate remembrance.

ITEM 25TH.—Nor would I close without acknowledging my obligations to W'm D. Cooke, who, during the frequent absence of my son, as far as possible, supplied his place. As a small proof of my esteem, I therefore give and bequeath to him the sum of one hundred dollars, in addition to the articles in item 20th of this codicil which Mary B. Clarke may not take.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and published the 16th day of April, 1849, in presence of—

MARY B. CLARKE.
W'M J. CLARKE.

Time allowed def'd't, T. P. Devereux, to answer till Nov. term, A. D. 1859.

And thereupon the def'd't, T. P. Devereux, now and here in open court, admits due and personal service of a copy of the amended bill of the plaintiffs, and craves time to answer the same, until the 1st day of the November term, A. D. 1859, of this court—and time to answer is granted him accordingly; and the same day is given to the plaintiffs.

Proceedings at Nov'r term, A. D. 1859.

On which day, to wit, at a term of the circuit court of the Uni-
142 ted States, begun and held for the district of North Carolina, at the court-room in the city of Raleigh, on the last Monday in November, in the year of our Lord one thousand eight hundred and fifty-nine, and of our Independence the eighty-third year, being the 28th day of said month, before the honorable Asa Briggs, district judge presiding, sitting in equity, come the parties aforesaid by their attorneys aforesaid.

Filing of answer by T. P. Devereux.

And the defendant, Thomas P. Devereux, files his answer herein with the exhibits accompanying of the same in the words and figures following, to wit:

Answer of T. P. Devereux.

The separate answer of Thomas P. Devereux to the bill of complaint of Frank Q. Unsted and Elizabeth, his wife, and of Georgina P. Devereux, filed in this honorable court against the said Thomas P. Devereux, Right Reverend Lonidas Polk, and Frances Ann, his wife.

This defendant for answer to the said bill saith, that the genealogies of the several parties and their respective residences are correctly stated therein, and also the intermarriage of the plaintiffs, Frank and Elizabeth, this defendant also admits that the father and mother of this defendant departed this life as in the said bill is stated, and
143 this defendant has no reason to doubt that the times of their respective deaths are correctly stated. This defendant also admits that the said John and Frances Devereux at the date set forth in the said bill, duly sealed and delivered the deed mentioned in the said bill, a copy of which, marked "A," is filed with the same as an exhibit thereto; and this defendant supposes the same to be correctly copied into the said exhibit, but, if necessary, this defendant prays for greater certainty to refer to the original thereof in the possession of this defendant, which this defendant will produce if necessary, in the progress of this cause. But this defendant saith that contemporaneously with the sealing and delivery of the deed, a copy of which is attached to the plaintiff's bill, as an exhibit and marked "A," the said John Devereux sealed and delivered to this defendant another deed also dated the 3rd day of July, 1839, which last-mentioned deed is referred to in the said exhibit A, and refers in its body to the said exhibit, and this defendant insists is to be taken in connection with the said deed exhibited by the plaintiffs, as a necessary part thereof, and as evidencing together one single transaction of the said John and Frances. This defendant hath the original of the said deed in his possession, he hath filed a

copy thereof as an exhibit, attached to his answer, marked "Z,"
144 and submits to produce the original when thereunto required.
This defendant saith that under the said deed, he became liable to pay each of the female plaintiffs the sum of twenty-two thousand dollars, and the further sum of six thousand dollars, in extinguishment of a debt of their father's, which was a charge upon his estate then in the hands of their mother, amounting in all to the sum of fifty thousand dollars, with interest as provided. This defendant saith the said sum hath been fully paid and satisfied by him, and he hath in his possession the releases of the female plaintiffs for the sum of twenty-two thousand dollars each, and is fully prepared to prove the payment of the sum of six thousand dollars in satisfaction of the said debt.

Further answering, this defendant saith that, at the sealing and delivery of the said deeds, the said Frances announced that the reservation of fifty thousand dollars in her favor, in the plaintiff's Exhibit A, was intended for religious and charitable purposes; that the said John Devereux objected to the amount as unreasonably large and oppressive upon their family, and for that cause refused to permit the settlement then proposed to be perfected. This defendant saith that the resolution of the said John was only altered by an engagement
145 of the said Frances to consider the said sum of $50,000 as a charge, not only for all religious and charitable objects, but as an ample provision for her comfortable and adequate support, independent of any addition thereto from the proper estate of the said John. And this defendant saith that, upon the promise of the said Frances to the said John, in nowise to interfere with the arrangements of his will, the consent of the said John to the said settlement was given, and the same was completed.

This defendant, further answering, saith that the said John and Frances were an affectionate couple, who had lived more than half a century together. There was to this defendant's knowledge no serious difference of opinion between them, excepting the subject of religious charities. That afterwards the said John handed this defendant his last will and testament, and requested this defendant to read it; that upon this defendant's observing that the provision for his wife, this defendant's mother, was small, the said John referred at once to the promise of the said Frances touching the $50,000, and stated he would cheerfully give her his whole estate, were it not for her morbid feelings upon the subject of religious charities; and this defendant hath in his possession a will of the said John, made before the said 3rd day of July, 1839, but revoked by a subsequent will, which was duly
146 proved, in which a competent provision is made for the said Frances, according to the property of the said John at its date. This defendant prays to state these facts, as they influenced this defendant in his subsequent conduct in respect to the subject-matter of the plaintiff's bill. This defendant saith that he submits upon the proper construction of the two deeds A and Z, that it is somewhat doubtful whether the yearly reservation of $3,000 was not intended to be a stipulation for the annual payment of the interest upon the sum of $50,000 by this defendant to the said Frances; but, however this may be, this defendant saith that the said Frances so intended it; and, if otherwise expressed, it was a mistake in the draft of said deed. For he saith that, after the death of the said John, her husband, viz., in the year 1845, the said Frances sent for a most respectable counsellor at law, and directed a deed to be drawn correcting the said mistake, a copy of which deed, marked "X," this defendant hath filed with this

answer, and prays to be taken as a part thereof; the original of which is in the possession of this defendant and will be produced when required by this honorable court. And this defendant saith that he believes the existence of the said deed of correction was well known to the plaintiff Frank before the filing of said bill of complaint.

147 This defendant saith, that he has not in his possession, at the time of drafting this answer, copies of the papers filed as exhibits to the bill of complaint, marked "B" and "C," but this defendant supposes them to be correct copies of the will of the said Frances Devereux, and of an attempted alteration of that will, and of a codicil to that attempted alteration. This defendant, therefore, admits the same, subject to his rights to correct any mistake by the production of certified copies thereof. This defendant admits that, between the dates of the two said papers, the said Frances had, in consequence of her infirmity of disposition in respect to religious and charitable objects, by successive charges of sums of money, in a great degree exhausted the power given her by the said settlement of charging the property of this defendant. As to the reason for rejecting one of the said papers, and admitting the other to probate as the will of the said Frances; this defendant saith that this whole matter is beyond the jurisdiction of this honorable court, and was and is within the exclusive cognizance of the court of probate, where, and where only, any error, if error there be, in admitting the one or rejecting the other, can be alleged, heard, and corrected—

148 whilst in this, and in all other courts, except the said court of probate, the sentence pronounced is final and conclusive; that the paper admitted was, and is, the will, and the paper rejected is not, and never was, a testamentary disposition of the said Frances. Of any thing beyond what was so decided in the said probate court, this defendant insists that this honorable court can take no judicial cognizance. Nevertheless, as the statements in respect thereto contained in the plaintiff's bill are very incorrect, in order to correct the same this defendant denies that either of the said papers was rendered inoperative by reason of any interest of the attesting witnesses thereto, for this defendant saith that neither of the attesting witnesses to said instruments had any interest whatever in either of those papers. True it is, that the attesting witnesses to the codicil to Exhibit C, had such interest; but he avers that the paper marked "Exhibit C," was rejected on the final trial of the issue, mentioned in the said bill and hereinafter admitted, because the witnesses thereto testified that at the execution thereof, the testatrix had not a sound and disposing mind and memory, and the codicil thereto of course could not be proved, the witnesses being interested, and those to the paper, marked "Exhibit B," swore that, at the execution thereof, the said Frances was in her usual mental state, and competent to make a valid disposition of her property. And

149 this defendant avers, that these facts, in respect to the probate of one and the rejection of the other testamentary paper, had been fully communicated to the plaintiff Frank, before the drafting the said bill of complaint.

This defendant admits that the said Frances dissented from the will of her husband, the said John, and, upon such dissent, became entitled to one-fourth of his nett personal estate; that there was no legal bar to her right to claim this fourth, and that the same was laid off to her out of the legacies given by the will to M'r's Polk, and this defendant, and his son, John Devereux, junior, without reference to the advance made to the said George Devereux, the father of the plaintiffs, Elizabeth and Georgiana. This defendant hath filed with this answer a copy of the

proceedings of the county court of Wake, in regard to the said dissent of the said Frances, and hath marked it "Y," and also a copy of the will of the said John, which he prays may be taken as a part thereof.

In justice to the memory of the said John, this defendant prays to add that, by a prior will dated before the said 3rd day of July, 1839, the said John had given to the female plaintiffs and their mother a large sum of money, fully equal, in connection with advancements to their
150 father, to what he thought a just share of his estate. The said John, after the settlement of July 3rd, 1839, always stated his belief that the provisions of his will, with the prior advancements, and the sum secured to the female plaintiffs, amounting to some $83,000, clear of debt, was, under the circumstances, more than their fair proportion of his whole estate, and frequently expressed his determination to a'ter his said will. And learning that the mother of the female plaintiffs had, by importunity, procured from the said Frances, his wife, an assignment of $5,000, part of the sum which she had a right, under the deed of settlement, to charge upon this defendant, he became greatly incensed, and at once revoked that will, and made the one copied into Exhibit Y.

This defendant entirely agreed with his father, the said John, in opinion as to the morbid notions of his mother, the said Frances, in respect to charities of different kinds. There was such an entire difference of opinion upon this subject, and this subject only, that conversation on it was disagreeable. This defendant felt it his duty to call to his mother's notice the fact that her indiscriminate profusion to all supposed charitable objects brought to her notice was fast exhausting the amount which she had power to charge upon this defendant to a sum the interest of which would hardly suffice for her comfortable support. This
151 defendant has reason to believe that originally she intended to give $8,000 to each of the religious corporations or societies mentioned in the Exhibit B; that subsequently she felt compelled to reduce that sum as is set forth in Exhibit B, and the conversation above mentioned, this defendant believes, produced the attempt at a further reduction, as set forth in Exhibit C, which had been drafted some months before its execution.

This defendant saith that it is manifest upon the exhibits attached to the bill that a clear and absolute intestacy of the said Frances would be the most beneficial result, in a pecuniary point of view, to this defendant. But this defendant does not believe that he ever stated to the mother of the plaintiffs, Elizabeth and Georgina, that he would contest the said will. On the contrary, this defendant does not recollect ever entertaining such an intention. He well recollects stating to the said mother that, as the elder surviving member of the family, he in no way should disapprove of her doing so on the part of her children, the plaintiffs. The said mother of the plaintiffs replied, as well as this defendants recollects, that she would be governed by the course of the defendants, the Right Reverend Leonidas Polk and Frances, his wife.

152 This defendant saith it is false and injurious, both to this defendant and to the reputation of the late honorable William H. Haywood, to aver, as the plaintiffs in their bill do, that there was any combination or conspiracy between this defendant and the said Haywood to effect any result in respect to the probate of the will of the said Frances, or in respect to anything connected with the interests of the plaintiffs. For this, defendant saith that for several years before the offering the said will for probate, and this defendant believes up to that time, and for some time after, there has been a coolness between this defendant and the said Haywood, amounting to an entire alienation.

But this defendant finding that the defendant Leonidas, on behalf of his wife, the defendant Frances Ann, had filed a caveat to the probate of the said will, and was represented by able counsel, and knowing the intention of the said mother of the female plaintiffs to be governed by his conduct, according to his recollection, wrote to her requesting her not to be governed by this defendant's coolness towards M'r Haywood, but to employ him to attend to the interests of her children; and this defendant expressed the belief that the duties he might assume would be ably and faithfully performed. In reply to this letter, the said mother ex-
153 pressed her gratification at this defendant's waiving all personal objection to M'r Haywood, stated how much she had been gratified by association with that gentleman and his family during a then recent winter spent in Washington, and requested this defendant to retain him for her daughter; which this defendant did. This was the whole of this defendant's connexion with that controversy on that side. He employed M'r Haywood to represent the interests of the female plaintiffs, and did not employ him to represent this defendant, in that controversy. This defendant took no part in it, had no interest in it, which he intended should be represented, and had declined, and continued to decline, to interfere with its progress, except as hereinafter stated. This defendant saith that the appointment of M'r Haywood as guardian ad litem, so much complained of by the plaintiffs, was in the ordinary course of practice in cases where infants are parties, is, practically, a mere formality; and this defendant then knew, and now knows, no person upon whom th· appointment could more properly have devolved. This defendant saith that he knows nothing of M'r Haywood declining an interview with the mother of the female plaintiffs; but if he did so, this defendant cannot be expected to assign the reasons for his conduct.

154 This defendant denies that he stood in any fiduciary relation to the mother of the female plaintiffs. As the widow of a brother, who was dear to this defendant, he did everything for her in his power, but this defendant saith he verily believes the said mother confided in no one. She sold a large property of her late husband, situate in North Carolina, but did it entirely without consulting this defendant, who knew nothing of the sale until after it was made, and to this day knows nothing of the collection and subsequent investment of the purchase-money. Under the settlement, as made by Exhibits A and Z, it became the duty of the defendant to pay her certain monies on certain days. This defendant was in no wise indulged as to the payment or consulted as to their investment, but either remitted, by her direction, the several amounts at the days of payment, or paid them to her agents in North Carolina. And this defendant hath no recollection of any application by the said mother to this defendant for advice subsequent to the execution of the said settlement, excepting a request to aid her in selecting counsel for her children in defending the suit as to the will of the said Frances Devereux.

155 This defendant saith that in the conduct of the said issue he maintained an entire neutrality. This defendant clearly stated to all the parties to the controversy that he should insist upon a fair trial of the issues, and should be satisfied with the result, and that he would not suffer the will to be undefended. And this defendant believes that, in execution of this resolution, when William D. Cooke, as mentioned in the bill, declined all connection with the controversy, this defendant procured the services of Seymour W. Whiting, also mentioned in the bill, to protect the interests of the legatees. This defendant saith he hath not at hand while drafting this answer a copy of the

proceedings in the said issue. He believes he hath stated the steps as they were taken, but in this he submits to be corrected by the record of the said cause, which this defendant will file as an exhibit. But this defendant saith that whatever the said record may show as to this defendant's in any way taking a part in the said suit as an executor, or as desirous to prove the said will, must be a mistake; for by no act of his did this defendant ever evince any intent to prove the said will as an executor. Such an act was entirely contrary to the taste, the interest, and the preconceived plans of this defendant. This defendant saith that since the original draft of this answer was made he hath examined the files of the court in which the said issue was finally tried, and
156 hath found among them an unsigned paper, in the handwriting of some person to this defendant yet unknown, a copy of which, marked "M," this defendant hath herewith filed. At the time he had no counsel in the cause, and he gave no consent personally to the preparation of this paper, and had no knowledge of its existence until since the first draft of this answer was made; yet he is confident that he must have been present during that term of the court, for he recollects stating that he thought it was not just or fair to the said William D. Cooke that he should, in consequence of his intervention, be charged with the payment of any costs. This defendant believes that at or about the time when the said exhibit appears to have been drawn, arrangement was made that Seymour W. Whiting, who had before that time been appointed administrator pendente lite, should carry on the said suit, and, if the will was proved, should be appointed administrator with the will annexed; for this appointment was made at the succeeding November term of the county court of Wake, where the suit was returned by writ of procedendo. Or it may be that, upon the expression of this defendant's conviction that the said William D. Cooke should not be charged with costs in respect to the said suit, it may have been agreed that the suit, for the purposes of the trial then instant,
157 should progress in his name; the said Whiting to be appointed administrator with the will annexed, as was subsequently done. At any rate, this defendant submits that the said paper never was acted upon. The suit progressed in the name of the said W. D. Cooke; and so this defendant most positively avers, that by no act of his did he ever, in any way, become a party to the said suit, excepting as it was necessary to cite him as one of the next of kin to all proceedings. This defendant admits that upon the probate of the will, set forth in Exhibit B to the said bill, the said Whiting, in November, 1852, was duly qualified as administrator, with the will annexed; and this defendant also admits that the said Whiting, in taking this step, acted upon the request of this defendant; and that this defendant, with a gentleman of great respectability, became sureties to his administration-bond. But he saith that it is wholly untrue that said Whiting acted as the tool or agent of this defendant; for he saith that the said Whiting, now deceased, was a man of high integrity and great respectability; that this defendant was moved, by these characteristics of the said Whiting, in procuring his appointment of administrator, with the will annexed. It is not true that this defendant took possession of the slaves, or
158 other property belonging to the decedent, or treated them or it as if this defendant was the personal representative. On the contrary, this defendant saith that the said Whiting hired out the said negroes, whenever they were hired out, received the amount of said hire, paid the debts of the decedent, and, as this defendant believes, settled the only important account of the decedent, to wit, one with

this defendant's son, without the intervention of this defendant. This defendant saith that he recollects no act of his intermeddling with the said assets, unless it be in respect to the slave Evelina, hereinafter more particularly set forth. This defendant saith that he requested the said Whiting not to sell any of the slaves of the said decedent without consultation with this defendant, to which the said Whiting acceded; but at the same time this defendant placed at the disposal of the said Whiting, of the proper funds of this defendant, a sum equal to the discharge of all the debts of the said decedent. This defendant saith that he hath in his possession a statement of the said Whiting, furnished by him to this defendant, of the nett hire of the said negroes, and of the sales of two of them, a copy of which, marked "W," this defendant hath filed, and will produce the original when required. This defendant further saith that the said Whiting left a more extended, but still imperfect,
account of his administration, a copy of which, marked "K,"
159 this defendant hath obtained, and hath filed for the inspection of the plaintiff; but this defendant protests that this is a matter of discovery, which in no way concerns this defendant, and which he only makes from a wish to deal plainly. Upon inspection of this account, it will be seen that the said Whiting charged himself with the residue of the said sum of $50,000, which the said Frances had power to charge upon the estate of this defendant; but this defendant saith that the said Whiting, as he had no power, so this defendant believes had no intention, to raise the said sum; for this defendant saith that, upon the death of the said Frances, all power over the same ceased. In execution of his general plan, this defendant was willing to raise all sums necessary to pay the debts of the said testatrix. He, as stated in this answer, placed at the disposal of the said Whiting funds equal to this object; and whenever there was a surplus in the hands of the said Whiting, it was returned to this defendant, as appears by Exhibit W, and otherwise.

Further answering, this defendant saith that, acting on the great desire he hath hereinbefore expressed of carrying into execution, as far as practicable, the matured and well-settled intentions of his mother (Exhibit C), and the disposition of the property, made by the deeds
160 A and Z, and the will of this defendant's father, he determined in the event of a total intestacy, as the power to charge in his hands would in that event clearly cease in this defendant's favor, to use the same as far as possible to effect the said objects and to indemnify himself and his sister, the defendant Frances Ann, against the loss caused by what this defendant believed to be the ill-advised and unfortunate dissent of the testatrix from the will of her husband; and in case the will (plaintiff's Exhibit B) was set aside, and that copied in Exhibit C was established, to do the same thing as far as possible under the altered circumstances. Under these impressions and with this determination, this defendant, as he did not in fact, so he could have had no motive to conspire with M'r Haywood for the suppression of the attempted will of the said Frances (Exhibit C), most falsely charged upon him by the plaintiffs, but would have preferred its probate instead of Exhibit B. Accordingly, and whilst the said controversy was pending, he authorized M'r Haywood to propose, on his behalf, to the several charitable bodies taking legacies under these papers, to pay to each of them, at once and without reference to the final issue of the controversy in the probate
court, the amounts bequeathed to them respectively, as mentioned
161 in Exhibit C, upon receiving from them releases and full assignments of all their claims upon the estate of the said Frances.

But the purpos' and object of this defendant in authorizing this proposition, as hereinbefore set forth, were not communicated to M'r Haywood. These proposals were in the first instance rejected. Subsequently (and the time will appear from the dates of the assignments next hereinafter exhibited), this overture was renewed, and M'r Haywood procured from the Caldwell Institute an assignment of their interest for the full amount of the legacy to it, to be paid by this defendant. This defendant was not satisfied with either the result of the said negotiation, or with the mode of its execution. This defendant had the form of the assignment altered to the form set forth in Exhibit V., which is a copy of the assignment finally accepted by this defendant, and the original of which this defendant will produce when required. This defendant saith, believing that the will, Exhibit C, was determined upon by the said Frances, when she was in full possession of her understanding, in consequence of a very free conversation with this defendant as to the large inroads upon her right to charge, and that she had then determined to reduce the legacies to religious charities one-half, but had failed to effect her settled and well-formed determination by unfortunately postponing the completion of it to a period when, in the
162 opinion of the attesting witnesses, she was incompetent, he felt no scruples in endeavoring to reduce these legacies according to the matured and expressed wishes of the said Frances. This defendant saith that, thereafter acting for himself, and because of his conviction of his mother's wishes, he, as his convenience and ability permitted, proceeded to settle with the remaining four charities; but because of his peculiar legal position (which will appear by the 16th clause of the established will), he was more successful with them and procured assignments from them for the sum of two thousand dollars respectively paid them; copies of which assignments, marked "U," "T," "S," and "R," are filed as exhibits; and this defendant saith, that the dates at which the negotiations for all the said assignments were brought to a conclusion, he believes to be correctly stated in said copies. The suit finally resulted in the establishment of the first will (plaintiffs' Exhibit B), for the causes above herein set forth.

Further answering, this defendant saith that his purchases of the legacies, hereinbefore mentioned, were made solely for the benefit of himself, and he denies that when he made the same he was the executor of the said Frances, or in any way responsible as if he had
163 been. But, if in this he should be in error, and should by this court be held to have been, at the time of purchasing the same, the executor of the said Frances, or responsible as such, this defendant denies that their is any rule or principle of this court which converts him into a trustee of said legacies, to be held for the use and benefit of the plaintiffs, or any other person, and he insists that the purchases enure for his sole use and benefit. This defendant saith, that he also purchased of the Presbyterian Church, in Raleigh, the negroes bequeathed to said church by the eleventh clause of the established will (plaintiffs' Exhibit B), and herewith exhibits a copy of their assignment, marked "N"; that he procured from the defendants, the Right Reverend Leonidas Polk, and John Devereux, the son of this defendant, assignments of all their right to the negroes of the said testatrix, as provided by the seventh clause of the established will, as shown by exhibits herewith filed, marked "Q" and "P." Having carried the slave Evelina to Philadelphia, and made there a suitable provision for her comfortable and respectable employment at fair wages; in fact, having done, with one exception, hereinafter mentioned, everything which this

defendant thought was obligatory on him in the view he took of conscientious obligation, this defendant thought he might safely be-
164 gin to indemnify his sister, the defendant, Frances Ann, against the consequences of their mother's dissent from the will of her husband, their father. This defendant saith that, with the consent of the said Whiting, this defendant covenanting to save the said Whiting from all claims under the will of the said Frances, and particularly against the claim of the Union Theological Seminary, whose assignment had not then been obtained, this defendant, by deed dated the 13th day of October, A. D. 1852, conveyed one-half of the negroes, late the property of the said Frances and remaining in the hands of the said Whiting, to Lucius Duncan, the trustee of the defendant, Frances Ann, the original of which this defendant supposes to be in the possession of the said trustee, or the said Frances, or some one for her, a copy of which, marked "O," this defendant hath filed as an exhibit to this answer. This defendant saith that the proportion of the loss occasioned by the said dissent was nearly one-third to the said Frances and two-thirds to this defendant, but the husband of the said Frances had then recently suffered a heavy loss from cholera among his negroes, and this defendant felt it proper not to weigh minutely the respective proportions of the said slaves to be assigned to her and himself. In setting apart the share of the said Frances, this defendant was indemnified against
165 a debt due him by her husband, which this defendant believes was a proper charge upon the separate estate of the said Frances, the object of the parties being to give the defendant, Frances, one-half of the benefit of everything done by this defendant. This defendant saith, in all this he was advised, and thought, and still thinks, he did no injury to the plaintiffs. He left to them entirely untouched everything which was provided for them by the deeds of July 3rd, 1839, Exhibits A and Z; he took nothing but what they were, by both the parents of this defendant, expressly cut off from. If this defendant made anything by his arrangements above set forth, it was made not out of the plaintiffs, for it never was theirs, and was used in repairing loss inflicted upon this defendant and his sister, the defendant, Frances Ann. This defendant, also, by his arrangements, denied no rights of the plaintiffs; on the contrary, he submitted to deliver to them their share of anything in the hands of this defendant which had not been disposed of by either of his parents, and of this readiness of this defendant the plaintiff, Frank, had full notice.

This defendant saith that, upon the Exhibit A, filed by the plaintiffs, he submits that the plaintiffs have no right to an account of the disposition of the said sum of $50,000, or any part thereof, and this defendant declines to make any discovery in respect thereto.
166 So, also, this defendant saith he is not, and never was, the personal representative of his mother, the testatrix, Frances, and never had, and hath not now, the custody of her papers. The administrator, M'r Whiting, handed to this defendant a few papers, which this defendant thought might be possibly necessary to his security, and which, having no reference to anything but the $50,000 charge upon this defendant, this defendant declines to produce. This defendant, therefore, saith he is not bound to make any discovery in respect to the estate, papers, or accounts of the said Frances, or to account to the plaintiffs for the same, and this he submits to the judgment of this honorable court. This defendant saith he hath no recollection of any advancement of any kind or amount made to him by the said Frances, after the death of her said husband, unless such advancement result

from the following facts: The mother of the plaintiff, on one of her visits to North Carolina, was asked by a slave, then about to be sold, who had faithfully and kindly attended her husband in some of his numerous illnesses, to pay him, in pursuance of a promise made by her to the said slave. The said mother declined doing so, but importuned the testatrix, Frances, to buy him, in the name, and for the use of this defendant, which the said Frances did, at the cost of twelve hundred dollars.

167 This defendant saith he was not aware of the said purchase for some time after it was made. This defendant did not like that the mother of the plaintiff should show her gratefull feelings to the said slave at this defendant's expense. He was, moreover, certain that the said negro was, at the time of the purchase, laboring under a mortal disease. This defendant, therefore, promptly repudiated said purchase, and refused to have anything to do, on his own account, with the said purchase; and, thereupon, this defendant was instructed by his mother to pay the price she had agreed to give, and charge the amount thereof to her, and take possession of the slave. This defendant did as requested, and found the slave nothing but of bill of expense, costing this defendant about two hundred dollars; when he died, as this defendant had foreseen, within about one year after the purchase. This defendant is advised, and believes, and submits to the judgment of this honorable court, that even if these facts, under the general law upon that subject, constituted an advancement, it is not one under the circumstances of this case, where the plaintiffs claim, not upon a general intestacy, but merely their share of what has not been by the will of the testatrix otherwise disposed of.

168 This defendant saith that about the year 18 , the business in which the plaintiff's father was then engaged having proved unfortunate, he was advanced in land of the estate of the said Frances Devereux of the value of about $, then conveyed to him by deed of the said Frances and her husband, the said John. This defendant also saith that, during this defendant's frequent absences from Raleigh, the residence of his mother, William D. Cooke, heretofore mentioned in the pleadings, and also one of the executors appointed in the established will of the said Frances, acted as the friend and business agent of the said Frances; that upon some occasion, while so acting, he handed this defendant an assignment made by the said Frances, and, as this defendant believes, in the handwriting of the said William D. Cooke, in favor of this defendant for eight thousand dollars, on account of the said sum of $50,000, to enable this defendant to employ a clergyman for the instruction of his slaves; that this defendant generally, and as he was able, in consequence of the often-repeated request of the said Frances, had a clergyman for that purpose. This defendant saith, at the time of drafting this answer, he cannot find said assignment, but prays permission hereafter to file the same and claim the benefit thereof, should it become necessary in the progress of this suit.

169 Further answering, this defendant saith that the plaintiffs have received from the estate of the said Frances Devereux all to which they, or either of them, was, or is, entitled under her will, or otherwise under the law of the land; that she, having died testate, the plaintiffs have no right to call for any account of advancements made by her to any of her children—such advancements, whenever made, being required by the laws of the State to be accounted for only in the case of total intestacy.

Further answering, this defendant saith, that after the making of the settlement of July, 1839, by the said John and Frances, the said Frances

ceased to have any right or interest in the lands and real property comprised therein, and became, and was, a mere stranger to the estate therein, which became, and was, wholly vested in this defendant in fee-simple; that the power by the said settlement created in her to charge, from time to time, and in such proportions as she might choose, the sum of $50,000, upon this defendant, was a mere power in gross, collateral to the land or to this defendant's estate therein, and was not, in any sense of the term known in law, property; and it being expressly provided in the said settlement that "if the said sum of money, or any part thereof, shall remain unpaid, or shall not be invested during her life, and if the said Frances shall not by deed, or will, or writing in nature thereof, or by some other act, give, grant, dispose or direct
170 any payment, investment, or application of the same, then the said sum of money, or so much thereof as shall remain not paid, given, granted, disposed of, or directed to be invested, paid, or applied, shall be considered as lapsing, and the charge therefor as extinguished for the benefit" of this defendant; and this defendant insists that the will of the said Frances contains no gift, disposition, or direction of payment, application, or investment of any part thereof, within the meaning of the said proviso, and, therefore, that the whole residue of the said sum, as it stood at the death of the said Frances, lapsed, and all right to raise or charge it upon this defendant ceased. If in this conclusion this defendant shall by this honorable court be deemed in error, then this defendant insists that the legacies given by the will of the said Frances were first payable out of her personal assetts, and no part of the said residue being liable thereto, except what may be absolutely necessary to supply any deficiency in the said personal property to satisfy the said legacies; and as there is no residuary clause in the said will, the residue of the said sum is undisposed of, and, if undisposed of, is, by the terms of the settlement, lapsed for the benefit of this defendant, and cannot be claimed by the next of kin, since
171 none can claim the same or any portion thereof but in virtue of a gift or direction of the said Frances.

Further answering, this defendant saith, that upon the face of the plaintiff's bill, and the relief thereby sought, it manifestly appears, as well as from the matters in this answer set forth, that an account of the administration of the assetts of the said Frances ought to be and must be taken, and according to the course of this honorable court a personal representative of the said Frances is a necessary party, without which this court ought not to and will not proceed therein. Wherefore, and by reason of such omission of the personal representative of the said Frances, the said bill and this suit are defective and insufficiently constituted; and this defendant prays the full benefit thereof, as if the same were made the ground of a demurrer or were specially pleaded in bar to the said bill. And this defendant prays to be hence dismissed with his costs, &c.

GEORGE E. BADGER.
B. F. MOORE.
H. W. MILLER.
P. H. WINSTON.

STATE OF NORTH CAROLINA,
Halifax County:

Thomas P. Devereux, the defendant in the within and foregoing answer mentioned, maketh oath that all the matters of fact
172 in the said answer stated as within his own knowledge are true,

and those therein set forth upon information, belief, or otherwise, he believes to be true.

T. P. DEVEREUX.

Sworn & subscribed before me.

E. P. W.

I, the said Charles N. Webb, esquire, one of the justices of the peace, and ex-officio one of the judges of the court of pleas and quarter sessions for the above-mentioned county of Halifax, do certify that on the 11th day of July, A. D. 1859, at Halifax aforesaid, the foregoing affidavit was duly sworn and subscribed before me by the said Thomas P. Devereux.

Given under my hand at Halifax the day and year above written.

CHARLES N. WEBB, *J. P.* [SEAL.]

Exhibit Z, with answer of T. P. Devereux.

Copy of deed from John Devereux to Thomas P. Devereux, of July 3d, A. D. 1839.

This indenture was made this 3rd day of July, in the year of our Lord one thousand eight hundred and thirty-nine, between John Devereux, esquire, of the county of Wake, of the one part, and Thomas P. Devereux, of the same county, of the other part, witnesseth,

That whereas the late George Pollok, of Halifax County, hath recently departed this life intestate, unmarried and without issue, leaving
173 Frances, the wife of the said John, and sister of the said George, and the children of a deceased sister of the said George, his next of kin, entitled to distribution of his personal estate, of which the share or portion of the said Frances is one moiety or equal half part; and whereas the said George, at his death, was possessed of and entitled unto a very large personal estate, consisting of negro slaves, bank stock, horses, cattle, monies, farming utensils, and stock, and other personal goods, chattels, and effects, to the one moiety or equal half part whereof (remaining after payment of his just debts) the said John is entitled in right of his wife, the said Frances; and whereas the said Thomas hath obtained letters of administration from the court of pleas and quarter sessions of Halifax upon the personal estate of the said George Pollok, of which he hath possessed himself, and the said John desires to convey, settle, and assure the said estate to which he is entitled as aforesaid upon certain trusts and for certain purposes hereinafter particularly specified and set forth:

Now, therefore, the said John Devereux, in consideration of the premises and of the sum of one dollar by the said Thomas P. Devereux to him in hand paid, and for divers other good causes and considerations him thereunto moving, hath released, bargained, sold, and assigned, and doth hereby remise, release, bargain, sell, and assign unto the
174 said Thomas P. Devereux all the before-mentioned moiety or half part of the said slaves, bank stock, horses, cattle, monies, farming utensils, and stock, and other personal goods, chattels, and effects, which were of the said George Pollok at his death, with all the interest, right, property, claim and demands, as well of the said Frances as of the said John, in and to the same, to have and to hold to the said Thomas P. Devereux, his executors, administrators, and assigns forever, for and subject nevertheless to the charges, uses, trusts, provisoes, limitations, and directions following; that is to say—

First. That the said Thomas shall pay to the said John the full sum of ten thousand dollars, one moiety or half part thereof to be paid on the first day of March, A. D. 1841, and the residue one year thereafter.

Secondly. That the said John Devereux shall be at liberty, and doth hereby reserve to himself the right to select and take away five of the negro slaves to himself as his own property, without paying any price or consideration therefor.

Thirdly. That the said Thomas, his executors, administrators, and assigns, shall pay to Elizabeth Devereux and to Georgina Devereux, infant daughters of the late George P. Devereux (son of the said John), by Sarah Elizabeth Devereux, his wife, each the sum of eleven
175 thousand dollars, to be paid to them respectively on their attaining full age or marriage, with interest therefor after the first day of March, A. D. 1842, as follows, that is to say, for five years thereafter at the rate of three per centum per ann'm, and thenceforward at the usual rate of six per centum per annum, payable on the first day of March in each and every year, and if one of the two daughters aforesaid shall die unmarried and within age, one moiety or half part of the sum directed to be raised for her shall be paid to the said Sarah Elizabeth, her mother, for her own use, if she shall be living at the death of such daughter, and the other moiety or half part thereof shall lapse and the charge therefor be extinguished for the benefit of the said Thomas; and in like manner on the death of the other daughter unmarried and within age, one moiety of her eleven thousand dollars shall be paid to her said mother (if living), to her own use, and the other moiety thereof shall lapse, and the charge therefor be extinguished for the benefit of the said Thomas; and should the event on which the said Elizabeth shall become entitled to the said moieties of the said sums, or either of them, happen on or after the first day of March, A. D. 1842, then the same shall be payable to her immediately; if before, then
176 on that day. And should it happen at the death unmarried and within age of both or either of the said daughters, their mother shall not be living, then the whole of the portion or portions respectively shall lapse, and the charge therefor become extinguished. And it is hereby declared and provided that the said Thomas P. Devereux may, at his election, anticipate the times for paying the said two sums of money, and, before the same shall become due and payable, may pay the same or any part thereof to any pe'son by law authorized to receive the same on the part of the said daughters or either of them. And, as the said John hath entire confidence in the said Sarah Elizabeth, it is hereby declared and provided that she may receive, and the said Thomas may make to her any payments on account of her said daughters or either of them, and that her receipt for any such payment or payments, whether of principal or interest, shall be a full and ample acquittance of the said Thomas.

Fourthly. That the said Thomas P. Devereux, his executors, administrators and assigns, shall pay to Frances Ann, wife of the Right Reverend Leonidas Polk, and daughter of the said John, the full sum of fifty thousand dollars, to be paid in equal annual instalments of five
177 thousand dollars, the first payment to be made on the 1st day of March (A. D. 1842), one thousand eight hundred and forty-two, and the said Thomas shall be charged with interest on the said sum of fifty thousand dollars and such portions thereof as may from time to time remain unpaid as follows, that is to say, for five years from and after the first day of March, 1842, at the rate of three per centum per annum, and thereafter at the rate of six per centum per annum; pro-

vided always, that the said Thomas P. Devereux may, at his discretion, pay the said sum of money or any part thereof, or any instalment or part of an instalment thereof, from time to time, and at any time, before the same shall become due and payable; and provided also, and it is hereby declared and expressly directed, that of the said sum of fifty thousand dollars one moiety or half part shall be a separate provision for the said Frances Ann Polk, shall be paid into her proper hands, or otherwise be invested or held for the sole and separate use of the said Frances Ann Polk, without being in any manner subject to any charge, release, assignment, disposition, or control of her present or any future husband, nor to pass to, nor vest in the personal representative of the husband, but to be in all respects subject to her order and disposal,
178 and to pass, at her death (if then undisposed of), as if she were a feme sole and unmarried. And provided further, and it is hereby declared and directed, that should the said Leonidas and Frances Polk, at any time on or before the first day of March, A. D. 1841, elect to take negroes instead of the said sum of fifty thousand dollars, and also to take lands instead of a like sum, directed to be raised for the said Frances, by a deed of conveyance bearing even date with these presents, between the said John and Frances Devereux of the one part, and the said Thomas of the other part, as will appear by reference thereto, and notify the said Thomas of such election to take lands and slaves instead of the said two sums of money, or should the said Thomas on or before the said first day of March, A. D. 1841, elect and notify the said Leonidas and Frances Ann of such his election to give lands and slaves instead of the said two sums of money, then on the first day of January, A. D. 1842, instead of the said sum of fifty thousand dollars, directed to be raised for the said Frances Ann Polk, there shall be allotted to her out of the negro slaves aforesaid, such number of slaves in families, as shall, at a fair valuation, be equal to the said sum of fifty thousand dollars, one moiety in value of which said slaves, so to be allotted to the said Frances
179 Ann, shall be properly conveyed and assured by the said Thomas to her sole and separate use, excluding entirely all right therein of her present or any future husband, and placing the same at her entire and absolute disposal, as if she were a feme sole and unmarried. And the said John doth hereby declare all the foregoing sums of money and payments directed to be paid and satisfied to be express charges and liens upon all the property, and particularly upon the negro slaves hereby conveyed, and subject to the same, and after the satisfaction thereof, the said John doth hereby declare, that the said Thomas shall hold all the property and estate hereby conveyed (except the slaves) to and for his own proper use, benefit and behoof forever. And as to all the said negro slaves, the said John doth declare that the said Thomas shall hold the same to and for the following uses, trusts, intents and purposes, that is to say, upon trust for his own use, benefit and behoof, for and during the term of his natural life, and no longer, and from and after his death, upon trust, for the payment and satisfaction, and to stand charged with the payment and satisfaction, of all and every the debts, which the said Thomas may owe,
180 at the time of his death, and subject thereto upon trust for any one or more of the children (born or to be born) of the said Thomas, their wives or husbands, for such estates, upon such trusts to such uses, and subject to such charges, conditions and restrictions, as he, the said Thomas, shall by any will or deed direct, limit and appoint; and should the said Thomas make an appointment to or in favor of more than one of his said children, sons-in-law or daughters-in-law, it is

hereby declared that they shall take in such proportions as he shall direct, and that no disproportion of value, however great, shall be deemed or taken to make the appointment illusory, or in any manner to defeat the same, but that his power shall be absolute and without restriction to appoint the whole to one, in exclusion of the residue, to some, in exclusion of the residue, or to all, and if to more than one or to all, then with such difference of value, as he may please, between them, though to some he should appoint a mere nominal portion, and in default or for want of any such appointment, then upon trust for the children of the said Thomas, who shall survive him, and their executors and assigns forever, share and share alike, and should any child of the
181 said Thomas die during the life of the said Thomas, leaving issue, which shall survive the said Thomas, such issue shall stand in the place of such deceased child, and take the same share as would, by such child, have been taken upon his or her surviving the said Thomas, and it is further declared that the issue of any child of the said Thomas shall, after the death of such child, be deemed within the power of appointment above given to the said Thomas. And it is hereby declared that for any purpose of partition, or for paying off and satisfying any of the sums of money above charged upon the said slaves, and (after the satisfaction of the said charges) for the securing or satisfaction of any debt or debts of the said Thomas, or for the purpose of changing the nature of the fund, and making other investments thereof, as to the said Thomas may appear expedient, the said Thomas shall possess full and absolute power to sell, exchange, grant and otherwise dispose of all or any of the slaves, as he, from time to time, may deem proper, and such sales, exchange or other disposition shall pass the title discharged of any trust; and the said Thomas, when the said power shall be exercised for the last above-mentioned purpose, shall hold or
182 invest the proceeds of such disposition upon the same trusts, and for the same purposes, and with the same powers, for and with which he held the slave or slaves disposed of.

In witness whereof the said John Devereux and the said Thomas P. Devereux have hereunto set their hands and seals this the day and year first above written.

JOHN DEVEREUX.
T. P. DEVEREUX.

Signed, sealed, and delivered (interlineations and erasures first made) in presence of—

GEORGE E. BADGER.

Probate of deed.

NORTH CAROLINA:

This day, the third of July, in the year 1839, before me, W'm Gaston, at Raleigh, was the due and legal execution of the foregoing deed, as their deed, respectively for the purposes therein declared, acknowledged by John Devereux and Thomas P. Devereux, the parties thereto.

Let it be registered.

W'M GASTON.

Certificate of registration in Wake Co.

Registered in the register's office of Wake County, in book No. 13, and pages 434, 435, & 436, the 16th day of July, A. D. 1839.

RICHARD SMITH,
Reg'r.

Examined.

W'M H. TERRELL.

Certificate of registration in Northampton Co.

Registered in my office of register March 9th, 1848, book No. 32, pages 406 & 409 inclusive.

SAMUEL CALVERT,
P. R. of Northampton County.

183 *Endorsement on Exhibit Z.*

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit X, with answer of T. P. Devereux.

Copy of deed of explanation from Frances Devereux.

State of North Carolina. To all people to whom these presents shall come:

Frances Devereux, of the city of Raleigh, in the said State, relict of John Devereux, late of the said city, sendeth greeting. Whereas by deeds dated in the month of July, 1839, a settlement was made by the said Frances, by and with the advice and consent of her said husband, of certain estates, both real and personal, then late the property of George Pollok, deceased, to which the said Frances had succeeded; and whereas in and by the same the sum of fifty thousand dollars was secured to the said Frances, together with an annuity of three thousand dollars; and whereas the annuity was by the said Frances understood to be the interest of the said sum of fifty thousand dollars, and not in addition thereto, and was to abate as the principal of the said sum was from time to time paid; and whereas doubts have arisen whether the said deed may not bear a contrary construction, and the said annuity be chargeable on the said estate over and above the said fifty thousand dollars:

184 Now, these presents are to declare that the true meaning and intent of the part of the said settlement above referred to is, that the sum of fifty thousand dollars, with the annual interest thereon, was to be hereby reserved to the said Frances, and that the said interest was to cease pro rata as portions of the said principal sum were from time to time paid and discharged, in the same manner as if the same was a debt due by the said estate, and that no annuity except the said interest was intended to be reserved by the said settlement to the said Frances.

In testimony whereof the said Frances hath hereunto set her hand and affixed her seal this day of in the year one thousand eight hundred and forty-five.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
JAMES IREDELL.

Endorsement on Exhibit X.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit Y, with answer of T. P. Devereux.

Copy of John Devereux's will.

I, John Devereux, of the city of Raleigh, being now in good health and of sound mind and memory, but considering the uncertainty of life, do make this my last will and testament in manner and form following; that is to say:

185 I have heretofore on various occasions, and in sundry ways, given a large amount of property to each and all my children, which I do not now wish them to account for, as the settlements then made I wish to be conclusive, and not have hereafter disturbed in any future settlement of what estate may remain to me at my death.

ITEM 1ST.—I wish my executors hereafter named to provide for my body a decent burial, such as my friends may wish, and to pay all funeral expenses.

ITEM 2ND.—I request that my plantation may be kept up and worked just as it now is until all my just debts be paid out of the profits of the plantation, and of my other part of my estate that may come into the hands of my executors, except as hereinafter provided for, and I wish all my debts to be fairly and honestly paid.

ITEM 3.—I give to my beloved wife, during her natural life, the use of the home I now occupy, near the city of Raleigh, and the use of all my land attached to it, as occupied by me now. I also give her, should she survive me, the use of all the furniture in the house, with liberty to dispose of all or any part of it in any way she may please. I also give her the use of all the servants attached to the house, with liberty

186 to dispose of any of them, in any way she may think proper, by deed of gift or otherwise.

ITEM 4.—I hereby give and bequeath to my daughter, Frances Ann, wife of the Reverend Leonidas Polk, Bishop of Louisiana, one hundred negro slaves, now on my plantation in Bertie County, to be delivered to her after my just debts are paid, to be taken in families, of equivalent ages and value in comparing them to those which are left remaining after the said hundred are laid off to my said daughter, the said one hundred slaves to be free from any control of her said husband, and not liable for any of his debts, and should my said daughter die before me, it is then my desire that the said slaves be divided equally amongst her children, the father taking possession of them for their use.

ITEM 5.—As I have already given to the widow and children of my son, George P. Devereux, large portion of my property, as they were in justice to my other children entitled to, it is not my wish that they should receive and part of the property I may leave at my death, except the copy of the encyclopedia now at the plantation, which I hereby bequeath to my daughter-in-law, S. E. Devereux, and two hundred dollars to be paid to each of my grandchildren, Elizabeth and

187 Georgina, to be paid out of my estate on their marriage, or when they attain the age of eighteen years, to be laid out by their mother in a set of suitable tea furniture for each of them.

ITEM 6.—My brick houses in Newbern, on South & Front streets, I wish sold at public auction on a credit of one, two, and three years, the purchase-money to be secured by a mortgage on the property, and by good personal security; the property I wish put up in the following manner; that is to say: A line running south from the northeast corner of the dwelling-house on Front street, running along the archway close to the east wall to the southwest corner of said dwelling-house: then

east along the south wall of said dwelling-house; then east along the south wall of said house three feet; then a south line to the channel of Fish River, all the land, houses, and warehouses situated between the above line and land occupied by the late Hollister I wish put up in one lot, and all the land west of said line and lying between it and land now in the possession of M'r Van Cochlin I wish put up in an another lot, reserving to both lots the common use of the archway, the large brick house; the long warehouse, and the wharf belonging to the last described lot. It is wished that my executors may not sacrifice
188 the property, and should not sell at auction, but sell them at their discretion.

ITEM 7.—I own three tracts of land in Tennessee, under the care of Samuel McClanaham, who has orders to pay the taxes and sell the same. I wish them sold, as soon as possible and convenient, for what they will bring. M'r McClanaham has debts of mine to collect to the amount of three to four thousand dollars, which he will account for to my executors.

ITEM 8.—I own about 200 acres of land in Bertie County, which I bought of James Gordon. This land I give to my grandson, John Devereux, to him and his heirs and assigns forever.

ITEM 9.—My dwelling-house, near Raleigh, in which I have reserved a life estate to my wife and myself, after our deaths I hereby give the house and the land bought with it of the estate of Joel Lane, except the lot commonly called the cow-lot, to my granddaughter, Elizabeth P. Jones, wife of Thomas F. Jones, on condition that she and her husband reside in the house and make it their permanent residence. Should she decline doing so, I hereby give the said house to my granddaughter, Catharine I. Devereux, and in either case all the furniture not disposed of by my wife or myself during our lives is to go with the house.
189 The cow-lot, lying south of dwelling-house, I hereby give to my granddaughter, Sophia C. Devereux.

ITEM 10.—All the land I own in the neighborhood of Raleigh, which was bought of Col. Polk by son, Thomas P. Devereux, except that part sold by me to the railroad company and to M'r's Polk, I hereby give and bequeath to my grandson, John Devereux, to him and his heirs and assigns forever.

ITEM 11.—After those negroes I have given to my daughter, M'r's Polk, are laid off to her use, and six negroes, which my son, Thomas P. Devereux, now holds of mine, and the servants in and about Raleigh, allowing for those my wife may dispose of, there will then be left of negroes belonging to me in the State of North Carolina about one hundred and twenty head; these negroes, be the same more or less, together with all my stock of horses, mules, cattle, sheep, and hogs, together with all my farming utensils, stock of provisions, fodder, or any other property, real or personal, which I may own in North Carolina or elsewhere, I hereby give to my son, Thomas P. Devereux, and to his son, John Devereux, to be divided amongst them in any way they may see fit to divide it, paying all my debts in the way heretofore provided, and
190 should the Right Reverend M'r Polk desire to receive those negroes I have given his wife before my debts are all paid, in that case he is to receive them, on his paying the just proportion of my debts which the negroes so to be delivered would leave to the whole of my unpaid debts, and to the residue of my estate. I hereby appoint my son, Thomas P. Devereux, and my grandson, John Devereux, executors of this, my last will and testament, hereby revoking and cancelling all

other wills make by me. Signed and sealed this 20th day of October, 1843.

JOHN DEVEREUX. [SEAL.]

Signed, published, and declared to be the last will and testament of John Devereux, in presence of—

C. DEWEY AND JOHN PRIMROSE.

Codicil.

By the within will I do not intend the sale of the houses and lots in Newbern, nor the lands and debts in Tennessee, shall be applied to the payment of my debts, unless I do actually apply them during my life, but the said houses and lots, and lands and debts in Tennessee, together with the said six negroes in the hands of my son, Thomas P. Devereux, shall go to him and my grandson, John Dexereux; but I do intend that the bond of my son Thomas, which I hold, be applied to the payment of my debts, unless that, during my life, I may find it
191 necessary and convenient to collect the same.

JOHN DEVEREUX.

C. DEWEY.
JOHN PRIMROSE.

Probate.

November term, 1844.

WAKE COUNTY:

The foregoing last will and testament of John Devereux, deceased, was produced in open court and offered for probate, and the due execution thereof duly proven by the oaths of Charles Dewey and John Primrose, the subscribing witnesses thereto, and ordered to be recorded.

JAMES T. MARRIOTT, *Clerk.*

Clerk's certificate.

STATE OF NORTH CAROLINA,
Wake County:

I, Thomas J. Utley, clerk of the court of pleas and quarter sessions for said county, certify that the foregoing is a true and correct transcript of the last will and testament of John Devereux, dec'd, as it appears of record in my office.

Given under my hand and official seal, at office in Raleigh, the 14th day of April, A. D. 1859.

[SEAL.] THOMAS J. UTLEY, *Clerk.*

Endorsement on Exhibit Y.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

192 *Exhibit Y with answer of T. P. Devereux.*

Copy of assignment of negroes to Frances Devereux on her dissent from her husband John Devereux's will.

Upon a division of the negroes late the property of John Devereux,

the elder, deceased, upon his plantation in Bertie and about his house in Raleigh, the total value of the whole was found to be the sum of forty-nine thousand and fifty-seven dollars $49,057

Of the above Frances Devereux, the widow of the said John, is entitled, upon her dissent to the said will, to one-fourth of the said, sum say $12,264 25

The Right Reverend L. Polk, for his wife, Frances, is, under the will of the said John, after defraying the share of the said widow, *is* entitled to $20,584 50

Thomas P. Devereux and John Devereux, after a similar payment, is entitled to $49,047 00

Upon the ballot for said negroes the said Frances, widow, drew the following: Evaline, Mary, Priscilla, Sarah, Silas, Ellen, Carter, Tom, Viney, Solomon, Charity, Ren, Louisa, Charles, Alston, Hopey, Cato, Alfred, Clo, Alston, Lucinda, Millbury, Burwell, John, Elisha, Kate, Lisha, Josh, Betsey, Bird, Louisa, Nancy, Old Betty, Caleb, Hoburn, Peter, Caroline, Watson, Fanny, Old Jack, Judy, Tom, Aaron, Tatty, Becky, Aaron, Sarah, Nancy, Judy, Taffy, Nancy, Primus, Sally
193 Ann, Davay, Hetty, Tillmon, Chaney, Winey, Nancy, Scipio, Old Ned, valued at the sum of twelve thousand one hundred and ninety-five dollars, and is to receive of Thomas P. and John Devereux the sum of sixty-nine dollars and twenty-five cents.

The Right Reverend L. Polk, for his wife, Frances, drew the following negroes: Robin, Abby, Isham, Hatty, Cupid, Turner, Robin, Josh, Silas, Sabra, Haywood, Loft, Hannah, Peggy, Neptune, Primus, Penny, Amos, Abby, Ann Eliza, Harvey, Laura, Eve, Luly, Jacob, Stephen, Mitchell, Essex, Ellen Hog, Robbin, Fanny, Job, Asa, Stanly, Knowledge, Ishmael, Georgia, Esex, Rucky, Criss, Carley, Vinis, Jim, Cherry, Edmond, Tempey, Jim, Dilsey, Shade, Sash, Willie, Rufus, Ned, Betsey, Jack, Frank, Silvia, Anna, Winney, Mary, Armanius, Henry, Dick, Mariah, Sarah, Kelah, Dempsey, valued at the sum of sixteen thousand one hundred and seventy-seven dollars ($16,177), and is to receive from the said Thomas and John the sum of thirty-one dollars and twenty-five cents ($31.25). The said Thomas and John drew the following negroes: Jim, Carpenter, Nancy, Old Tatty, Shoe, Joe, Tider, James, Penina, Manuel, Winny, Isaac, Hamilton, Jerry, Beck, Carter, Joe, Amy, Abel, Sarah, Washington, Olly, Sophy, Susan, Adeline, Thomas, Jack, Harriet, Stewart, Levi, Sally, Jim, London, Bont, Frank,
194 Rose, Nicey, Nancy, Polly, Jack, Frank, Cæsar, Clarissa, Ransom, Kenney, Toney, Murry, Nelson, Sam, Rogers, Frank, Lama, Charley, Lancet, Empero, Mariah, Squire, Sam, Manuel, Emily, Tom, Sam, Esther, Patsey, Mariah, John, Gabiel, Netty, Hilliard, William, Judy, Phillis, Matilda, Hardy, Carney, Nervey, Reuben, Minner, Rilah, Nathan, Andrew, Martha, Mary, Disiah, Lane, Ned, Betsey, Nelson, Louis, Hannah, Harry, Nelson, Daniel, George, Lucy, Moses, Anna, Lucy, William, Febeby, Elijah, Beck, Jesse, Randolph, Harvay, Trissa, Manuel, Jacob, Moriah, William, Pompay, Amarchy, valued at the sum of twenty thousand six hundred and eighty-five dollars, and are to pay the said two sums above mentioned, of sixty-nine dollars and twenty-five cents ($69.25) and thirty-one dollars and twenty-five cents ($31.25).

Given under our hands and seals this thirteenth day of November, one thousand eight hundred and forty-four.

LEONIDAS POLK.
For FRANCES A. POLK. [SEAL.]
T. P. DEVEREUX. [SEAL.]
JOHN DEVEREUX. [SEAL.]
FRANCES DEVEREUX. [SEAL.]

Wake County court, August term, 1847.

The foregoing report was returned into court and confirmed and ordered to be recorded.

JAMES T. MARRIOTT, *C. C.*

195 *Clerk's certificate.*

STATE OF NORTH CAROLINA,
Wake County:

I, Thomas J. Utley, clerk of the court of pleas and quarter sessions for the county aforesaid, certify that the foregoing is a correct transcript of the division of the slaves belonging the estate of John Devereux, deceased, as it appears of record in my office.

Given under my hand and official seal, at office in Raleigh, the 14th day of April, A. D. 1859.

[SEAL.] THOMAS J. UTLEY, *Clerk.*

Endorsement on Exhibit Y.

On the back of which exhibit is the following endorsement, to wit: "Admitted, D. G. F."

Unlettered Exhibit with answer of T. P. Devereux.

Copy of the proceedings of the superior court of Wake County in regard to the probate of Frances Devereux's will.

STATE OF NORTH CAROLINA,
Wake County:

Be it remembered that at a superior court of law, begun and held for said county, at the court-house in the city of Raleigh, on the first Monday after the fourth Monday of September, A. D. 1850, before the honorable J. L. Bailey, judge, the transcript of the record of the court of pleas and quarter sessions of Wake County, in the case of W'm D. Cooke, executor, against the next of kin of Frances Devereux, deceased,
196 in the following words and figures, to wit:

STATE OF NORTH CAROLINA,
Wake County:

Be it remembered that heretofore, to wit, at a court of pleas and quarter sessions, begun and held for the county of Wake, at the court-house in the city of Raleigh, on the 3rd Monday of August, A. D. 1849, the following proceedings were then and there had, to wit: William D. Cooke brings into court two paper-writings, one dated 20th August, 1848, and attested by William J. Clarke and Catharine E. Fuller, the other dated 23rd December, 1847, attested by George Simpson and Daniel

Dupree, which purport to be the last wills of Frances Devereux, deceased, the said Cooke being one of the executors named therein. The said papers are filed, and upon motion of the said William D. Cooke, executor as aforesaid, it is ordered that subpœnas issue to the subscribing witnesses, and that notices issue to Thomas P. Devereux, Leonidas Polk, and his wife Frances, and to Elizabeth J. and Georgina P. Devereux, infant orphans, children of George P. Devereux, deceased, heirs at law and next of kin of said Frances Devereux, deceased, citing them
197 to be and appear at next court, to hear the proceedings of this court in respect to the probate of the said paper-writings, as the last wills of Frances Devereux, deceased, and the said Elizabeth J. and Georgina P. Devereux having no guardian in this State, at the instance of their mother, who resides in Connecticutt with the said children, it is ordered that William H. Haywood, j'r, be appointed their guardian pro hac vice, and to defend their rights and interest in this pending suit, &c.

Be it further remembered, that at the next term of our court of pleas and quarter sessions, begun and held for the county of Wake, at the court-house in the city of Raleigh, on the third Monday of November, 1849, the following proceedings were then and there had, to wit:

Leonidas Polk and his wife, Frances Polk, and Elizabeth J. and Georgina P. Devereux, infants, by their guardian pro hac vice, William H. Haywood, j'r, upon the notice given under the former order of this court, come in and suggest to the court that the said papers offered as the last wills of Frances Devereux, deceased, are not her last will, and that neither of them is her last will, and thereupon the court directs an issue to be made between William D. Cooke, the executor, and the said next of kin of
198 the said Frances Devereux, deceased, whether the paper-writing heretofore filed, dated 20th August, 1848, is the last will and testament of Frances Devereux, deceased, or not; 2nd, whether the paper-writing heretofore filed, dated 23rd December, 1847, is the last will and testament of Frances Devereux, deceased, or not; and it is ordered that a jury of good and lawful men, &c., be summoned, according to law, at the next sessions of this court to try the said issues, &c.

Thomas P. Devereux admits notice of these proceedings, he being one of the next of kin of said Frances Devereux, deceased. The said suit is then continued from term to term, until August term, 1850, of our said court, when the same is set for trial, and the following jury of good and lawful men, to wit: Abel Upchurch, W'm Patrick, Alfred Wood, John Merritt, John W. Earp, Lewis Nipper, Temple Robertson, Hiram Weatherspoon, Calvin Jordan, Bazil Yates, James Todd, and Drury Partin, having been duly sworn and empaneled to try the issue whether the paper-writing, in the following words and figures, to wit (here follows the will, dated 23rd December, 1847), is the last will and testament of Frances Devereux, deceased, and also whether the paper-writing in the following words and figures, to wit (here follows the
199 will, dated the 20th of August, 1848, with codicil of April 16th, 1849), be the last will and testament of Frances Devereux, deceased, and the said jury do say that neither of the said paper-writings aforesaid is the last will and testament of the said Frances Devereux, deceased; judgment of the court accordingly, and for costs; from which the plaintiff prays an appeal to the next superior court of law for Wake County, which is granted, and the appeal bond waived.

STATE OF NORTH CAROLINA,
Wake County:

I, James T. Marriott, clerk of the court of pleas and quarter sessions for the county of Wake aforesaid, do hereby certify that the foregoing is a true and correct copy of the proceedings had in our said court, in relation to the paper-writings purporting to be the last will and testament of Frances Devereux, deceased, and also of the said paper-writings and the judgment in said court as appears of record.

In testimony whereof I have hereunto affixed the seal of said court, and subscribed my name, at office in Raleigh, this 15th September, 1850.

[SEAL.] JAMES T. MARRIOTT, *Clerk.*

was filed, and the said appeal duly placed upon the trial docket of our said superior court.

200 The cause is continued from term to term until July (special) term, 1852, when, before honorable John L. Bailey, judge, the following proceedings were had, to wit:

WILLIAM D. COOKE
vs.
NEXT OF KIN OF FRANCES DEVEREUX, DECD.

On motion, William D. Cooke has leave to withdraw from this suit altogether, and accordingly his name is stricken therefrom, and he doth in court here surrender and renounce all right and power to qualify or act as the executor of Mrs. Frances Devereux, deceased. (And so Frederick Nash, and , other persons named as executors in both the following papers propounded for probate, do also come into court and surrender and renounce their said right and power to qualify and act as such.) And thereupon, Thomas P. Devereux, one of the persons named as executor to the paper-writings propounded, is made a party as such, upon his consent that he will pay out of the assetts all costs incurred up to this term, and all the costs actually incurred by the said William D. Cooke.

Whereupon, the following jury of good and lawful men, to wit, William Laws, Nathaniel Dunn, William B. May, Albert W. Partin, William L. Terrell, Isham Holding, W'm H. Scott, Henry Wall, Allen Adams, Drury Partin, John Buffaloe, and John R. Harrison

201 are sworn and empaneled to try the issue, whether the following paper-writing, to wit (here follows the will, dated 20th August, 1848, with codicil), is or is not the last will and testament of the deceased, do say and find that the same is not the last will of said deceased. And afterwards the same jury are sworn and empaneled to try the issue whether the following paper-writing, to wit (here follows the will of 23rd December, 1847), is or is not the last will and testament of the said Frances Devereux, deceased, do say and find that the same is her last will and testament.

Ordered, That a procedendo issue to the county court of Wake County, to admit to probate the said last foregoing paper-writing and certify the record hereof, &c.

Clerk's certificate.

STATE OF NORTH CAROLINA:

I, James A. Moore, clerk of the superior court of law of Wake County,

do hereby certify that the foregoing is a full, true, and perfect transcript of the record of said court (except that the wills, copies of which have been furnished the parties to the suit in which this record is filed as an exhibit, have been omitted) in the matter of the executor of Frances Devereux, against the next of kin of the said Frances, as appears of record and on file in my office.

202 In testimony whereof I have hereunto set my hand and the seal of said court, at office, this 29th of August, 1859.

[SEAL.] JAMES A. MOORE, *Clerk.*

Endorsement on Unlettered Exhibit.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Unlettered Exhibit with answer of T. P. Devereux.

Copy of the proceedings of the court of pleas and quarter sessions of Wake County in regard to the probate of Frances Devereux's will.

STATE OF NORTH CAROLINA,
Wake County.

Be it remembered that at a court of pleas and quarter sessions, begun and held for the county and State aforesaid, at the court-house in Raleigh, on the 3rd Monday of August, A. D. 1852, when were present presiding and holding said court the worshipful Johnson Busbee, Thomas G. Whitaker, and Green H. Alford, esquires. When the following proceedings were then and there had, to wit:

In the case of William D. Cooke, executor, vs. The Next of Kin of Frances Devereux, deceased, wherein heretofore an appeal was taken to the superior court, the following procedendo was sent down to this court from said superior court:

Superior court of law. Special Term. Third Monday in July, A. D. 1852.

STATE OF NORTH CAROLINA,
Wake County:

203 To the justices of the peace of the court of pleas and quarter sessions of Wake County, aforesaid:

Whereas at the present term of our superior court of law for the county of Wake, aforesaid, a certain suit in the name of William D. Cooke, executor of Frances Devereux, deceased, against next of kin of Frances Devereux, was heard and tried, which said suit was brought up to our said superior court for trial by an appeal from Wake County court, in which there was a caveat to the paper-writing purporting to be the last will and testament of Frances Devereux, deceased, and in your said court and in the said suit an issue was made up to try whether said paper-writing is and doth contain the last will and testament of Frances Devereux, deceased, and in the trial of the said suit and issue, the third Monday in July, A. D. 1852, the following jury of good and lawful men, to wit: William Laws, Nathaniel Dunn, W'm B. May, A. W. Partin, William L. Terrell, Isham Holding, W. H. Scott, Henry Wall, Allen Adams, Drury Partin, John Buffaloe, and John R. Harrison, being duly sworn and empanelled to try the issues, &c., find that the said paper-writing is and doth contain

the last will and testament of Frances Devereux, deceased: we
204 therefore command you that you proceed to have the said last will and testament of Frances Devereux, deceased, which we send down to you with this writ of procedendo, duly entered on the minutes of your said court, and have the same recorded, and that you have duly qualified Thomas P. Devereux, the executor therein named, and that in all respects you proceed in the said matter as the law and statutes direct.

In witness whereof, I, Richard P. Finch, clerk of our said court, have hereunto set my hand and affixed the seal of my office, in Raleigh, this 20th of August, A. D. 1852.

(Signed) R. P. FINCH, *Clerk*.

STATE OF NORTH CAROLINA,
Wake County:

Be it remembered that at a special term of the superior court of law, begun and held for the county of Wake aforesaid, at the court-house in Raleigh, on the third Monday in July, A. D. 1852, the following proceedings were then and there had, to wit:

W'M D. COOKE, EX'T'R,
vs.
NEXT OF KIN OF FRANCES DEVEREUX.

On motion, W. D. Cooke has leave to withdraw from this suit altogether, and accordingly his name is stricken therefrom, and he doth in court here surrender and renounce all right and power to qualify or act as the executor of M'r's Frances Devereux, deceased (and Fred-
205 erick Nash, Thomas P. Devereux, and John Primrose, other persons named as executors in both the following papers propounded for probate, do also come into court and surrender and renounce their said right and power to qualify and act as such), and thereupon, Thomas P. Devereux, one of the persons named as executor to the paper-writing propounded, is made a party as such, upon his consent that he will pay out of the assetts all costs incurred up to this time, and all the costs actually incurred by the said W. D. Cooke, whereupon the same jury are sworn and empaneled to try the issue whether the following paper-writing, to wit:

In the name of God, amen: I, Frances Devereux, in the State of North Carolina, being of sound and disposing mind and memory, and in the enjoyment of my usual health, do make and ordain this my last will and testament, intending thereby also to execute all powers vested in me and enacted in any deed or deeds heretofore executed, particularly those powers created in my favor by two certain deeds, settling and assuring the estate of my late brother, George Pollok, to my son, Thomas P. Devereux, dated some time in the month of July, in the year of our Lord eighteen hundred and thirty-nine, and executed by my late husband and myself; and I would here declare that my only hope
206 of a glorious resurrection is in the atonement made for sin by my Saviour, Jesus Christ, and acknowledge my best works are utterly unworthy of acceptance, further than as proofs of my faith. I cast them from me and cling to the righteousness of my Saviour, as my plea at the bar of Him who searcheth the heart. As it has pleased God to bestow a competence on my descendants, and as my prayer has ever been that they might be saved from the temptations which accompany

wealth, I feel at liberty to aid in extending the kingdom of Him who hath redeemed my soul from the lowest pit of destruction, and assist those engaged in enlightening the ignorant.

ITEM 1ST.—I give and bequeath to the trustees of the "Caldwell Institute," and to their successors and assigns (the said Caldwell Institute being at present located in the town of Hillsboro', Orange County, North Carolina, and having been incorporated by the legislature of North Carolina), the sum of four thousand dollars, which sum shall remain in the hands of Thomas P. Devereux for five years from the time of my death, he paying the interest accruing annually or semi-annually, as required during that time. The interest alone of said sum to be applied in payment of the salaries of the professors or instructors
207 in said institute wherever it may be located, provided it be within the State of North Carolina.

ITEM 2ND.—I give and bequeath to Clement C. Reade, of the county of Prince Edward, in the State of Virginia, and his executors, administrators, and assigns, the sum of four thousand dollars, in trust for the benefit of the Union Theological Seminary located in said county of Prince Edward, to be paid over by him to the order of such persons as may compose the board of directors of said seminary whenever the same shall be received by him, which sum shall be appropriated to the endowment of an additional professorship in said seminary. And until said endowment be completed the interest annually arising from said sum shall be added to the principal, or else applied to, or in the payment of, the salary of any professor or instructor not already adequately provided for.

ITEM 3RD.—I give and bequeath to the trustees of the board of education of the Presbyterian Church of the United States of America, and to their successors and assigns, the sum of four thousand dollars, to be applied by said board to the education of indigent, pious young men for the gospel ministry, but of the principal of this sum only five hundred dollars shall be used in any one year.

208 ITEM 4TH.—I give and bequeath to my executors and the survivors of them, and the executors, administrators, and assigns of the survivors of them, the sum of four thousand dollars in trust, to pay over the same to the person who, when the same shall be payable, shall act as treasurer of the board of foreign missions of the Presbyterian Church in the United States of America, to be applied to the use and purposes of said board, and under its direction, and the receipts of said treasurer shall be a full receipt and acquittance of my said executors for the same. But of the principal of this sum only one thousand dollars shall be so used in any one year.

ITEM 5TH.—I give and bequeath to the trustees of the board of missions of the general assembly of the Presbyterian Church in the United States of America, and to their successors and assigns, the sum of four thousand dollars, to be held by the said trustees and their successors forever, to and for the uses and under the direction of the said board of missions of the said general assembly, according to the provisions of their charter, to be appropriated to domestic missions, and only one thousand dollars of the principal to be used in any one year for that purpose.

209 ITEM 6TH.—I give and bequeath to my executors, and the survivors of them, the sum of five hundred dollars, in trust for the benefit of the Raleigh Female Benevolent Society, which sum shall be loaned out, or vested in some profitable stock, and the proceeds thereof alone applied annually in the payment of the salary of the teacher of

the school under the care of said benevolent society; provided, the said society shall raise a sum annually which, added to the proceeds of the above five hundred dollars, shall be sufficient to support a teacher; or, if said society should cease to exist, then the proceeds of the above five hundred dollars shall be applied to the payment of colporteur to supply religious publications in some destitute part of North Carolina.

ITEM 7TH.—It is my will that all my negroes who at the time of my death shall be in the possession of my grandson, John Devereux, in Bertie County, shall be kept together after my death until they have secured the crop on the ground at that period; at the expiration of that time my highly-esteemed son-in-law, Right Reverend Leonidas Polk, is to select as many families of said negroes as he wishes. These he
210 is to take at a valuation, giving bond for the same, payable in ten equal annual instalments; but as I know he is at great expense to promote the spiritual improvement of his slaves, I desire the expense attending their removal to be paid by my estate. Should John Devereux take any of said negroes, the same terms will be required as in the case of Leonidas Polk.

I give and bequeath to my beloved son, Thomas P. Devereux, and to his executors, heirs, and assigns, the sum of seven thousand five hundred dollars, in trust, for the following purposes:

First, to Miss Louisa Taylor, daughter of M'r's Eliza Taylor, fifty dollars annually, during her natural life.

Secondly, to Miss Ellen Anderson, who was brought up by my friend, Mary Jones, the sum of fifty dollars per annum, during her natural life.

Thirdly, to M'r's Elizabeth Kinns, now residing in the town of Newbern, in the State of North Carolina, an annuity of fifty dollars, to be paid annually to Thomas Sparrow of the said town of Newbern, for the benefit of the said Elizabeth Kinns, during her natural life.

Fourthly, to two girls at the mission-school in Ceylon, who bear the names of Catharine Ann Devereux and Frances Ann Polk, forty dollars per annum, to be paid annually to the secretary of the
211 American board of commissioners for foreign missions, for their support at the said mission-school.

Fifthly, to the Reverend Theron Baldwin, corresponding secretary of the society for promoting collegiate and theological education at the west, or to his successors in office, one hundred and twenty dollars per annum, to be applied by him in the cause of female education in the west or valley of the Mississippi, the object being to prepare pious Protestant females for teachers in that part of our country.

Sixthly, to Thomas P. Devereux, one hundred and forty dollars per annum, to aid in supporting a teacher (should he think fit to employ one) to give religious instruction to the slaves on the Roanoke river, particularly those in the possession of my descendants.

ITEM 9TH.—It is my will that the house and lot in Chapel Hill, purchased of Sidney Barber, be disposed of as my executors may deem best; if sold upon credit a mortgage must be taken upon the property until payment is made, which payment is to be vested in some productive stock.

ITEM 10TH. From the funds arising from the sale of the above slaves and the house and lot in Chapel Hill, it is my will that, at the death of M'r's Eliza Taylor, her daughter, Louisa, shall receive the
212 further sum of one hundred and fifty dollars annually, during her natural life; or should the said Eliza Taylor, by any providential visitation, be rendered incapable of teaching school, or arrive at the age of sixty years, then, in either of these contingencies, the said Louisa

Taylor shall receive the above-mentioned sum of one hundred and fifty dollars per annum, during her natural life, over and above the sum of fifty dollars per annum heretofore provided for her, the same to be paid the said Louisa Taylor by my executors annually.

ITEM 11TH.—I give and bequeath to Jesse Brown, George Simpson, Seymour W. Whiting, and William G. Clarke, trustees of the Presbyterian church or society in the city of Raleigh, or to their successors in office, five negroes, viz: Tom, Viney, Priscilla and her sons, George and Henry, with their increase, in trust, to be used or employed by the pastor of said church as he may direct, but should said church or congregation, in process of time, fail to adhere to the doctrine, order, and form of church government, set forth in the confession of faith of the Presbyterian church in the United States of America, then and in that case, I direct that the said negroes and their increase shall re-
213 turn to my executors to be distributed according to law, and further it is my will, that if the said church or congregation shall at any time fail to raise annually, as the salary of the pastor or minister, the sum of six hundred and fifty dollars, exclusive of the avails of said negroes given for the benefit of the pastor, then, and in that case, the bequest of said negroes shall be void, and they, the said negroes with their increase, shall return to my executors and be distributed according to law. It is my will that the said negroes, if hired out, should have a choice of masters, subject to the approval of the pastor of the church, and that they should not be publicly hired out.

ITEM 12TH. I give and bequeath to S. S. Souter, of the borough of Norfolk, and State of Virginia, to his executors, administrators, and assigns, the sum of five hundred dollars, in trust, nevertheless, for the association known by the name of the "Seaman's Friend Society," of said borough, the said sum of five hundred dollars, to be disposed of so as to promote the welfare of that society. In case the above sum shall be given to said society before my death, then this bequest to be void.

ITEM 13TH. I give and bequeath to Elizabeth Lacy, daughter of
214 the Reverend Dowry Lacy, at present residing in the city of Raleigh, a servant girl named Sarah, the daughter of Priscilla, now about seven years old, the said Sarah to remain with her mother until she is a proper age to be taken from her.

ITEM 14TH. In consideration of the faithful services of my female servant, Evelyna, it is my will that, at my death, she shall be sold to such person as she may choose for her master, and that my executors shall make and execute a good and sufficient title to the said Evelyna to such person, upon his executing a bond, with good and sufficient security, conditioned to pay and expend the sum of fifty dollars annually, for the period of four years, which is to be expended in employing some suitable person to distribute tracts and religious books in the most destitute portions of the counties of Nash, Wayne, and Johnston; and if the said person selected shall fail to perform the consideration of the bond before mentioned, then sale to be void, and the servant girl, Evelyna, is to make a second choice, and so on until the same shall be effected and my wishes complied with.

ITEM 15TH.—It is my wish that my servant girls, Rebecca, Delico, and Sally, shall be sold to some person or persons residing within the
215 limits of the State of North Carolina, and that the said servants shall not be sold at public sale, but at private sale, (and only to those who intend to retain them as domestics,) the price to be fixed by some discreet person or persons; my object being that they shall have masters who will treat them properly, and not take them out of the State.

ITEM 16TH.—Should my debts at my decease not exceed two thousand dollars, I give my carriage and horses to my beloved son, Thomas P. Devereux; if otherwise, it is my will and desire that my executors should sell all the stock of horses, cattle, hogs, &c., crops and farming utensils, and any personal property I may have in the possession of my grandson, John Devereux, (negroes excepted,) also my carriage and wagon, or any other property of the same description, and pay all my debts; and should the said property be found insufficient to pay the debts, then it is my will and desire that the negroes which may be in the possession of my grandson, John Devereux, at the time of my death, shall be hired out, and the proceeds applied to the payment of the balance, until the same shall be fully paid and satisfied, unless my grandson and son-in-law should arrange the payment of the same in
216 some other manner and take the negroes into their possession.

Should it appear, at my death, that the bequests exceed the amount of funds left, my will is, the first five only shall be curtailed, until brought within the limits of the assetts. It is my further will and desire, and I do so direct and appoint, that, if any one or more of the legacies hereinbefore given or intended to be given by me, should fail to take effect through any informality, or from any other cause, that then the sum so failing shall be added to and form a part of the other legacies, which shall be lawful and valid.

I do hereby constitute and appoint Frederick Nash, senior, Thomas P. Devereux, John Primrose, and William D. Cooke my lawful executors to execute this my last will and testament according to the true intents of the same, and having full confidence in the integrity and fidelity of my executors, I desire that they may be exempted from the necessity of giving security for the execution of the duties and trusts hereby to them committed.

In witness of all which I, the said Frances Devereux, do hereunto set my hand and seal this twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-seven, praying that
217 Almighty God, in His good providence and great mercy, would so overrule and direct and care for the several bequests herein made, that thereby His own glory and the good of His church may be promoted.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, published, and declared by the said Frances Devereux, to be her last will and testament in the presence of us, and in the presence of each other do, at her request, subscribe our names as witnesses thereto.

D. DU PREE.
GEORGE SIMPSON.

Is or is not the last will and testament of the said Frances Devereux, deceased, do say and find that the same is her last will and testament.

Ordered, that a procedendo issue to the county court of Wake County to admit to probate the said last foregoing paper-writing, and certify the record thereof, &c.

STATE OF NORTH CAROLINA,
Wake County:

I, Richard P. Finch, clerk of the superior court of law for the county of Wake aforesaid, do hereby certify that the foregoing transcript is a true copy of the proceedings had in the within-named case as on record in my office.

Given under my hand and the seal of our said court at office
218 in Raleigh this 20th day of August, A. D. 1852.
(S'gu'd) R. P. FINCH, *Clerk.*

And the court here doth adjudge the said last paper-writing to be the last will and testament of Frances Devereux, deceased, and that the same has been duly proved, and orders the same to be recorded, and no further proceedings are now had in this case.

Be it further remembered that, at a subsequent term of said court, to wit, the third Monday of November, A. D. 1852, when were present, presiding, and holding said court the worshipful William R. Poole, Johnson Busbee, and Thomas G. Whitaker, esquires, the following further proceedings were then and there had, to wit:

Thomas P. Devereux, one of the executors named in the last will and testament of M'r's Frances Devereux, deceased, appears in open court, by his attorney in fact, George W. Mordecai, and renounces his right to qualify as executor aforesaid, Frederick Nash, senior, John Primrose, and William D. Cooke, the other executors named in the said last will and testament, having heretofore renounced their right to qualify as such.

On motion, S. W. Whiting is appointed administrator upon the estate of M'r's Frances Devereux, deceased, with the will annexed, and
219 he enters into bond in the sum of fifty thousand dollars, with George W. Mordecai and Thomas P. Devereux as his sureties, who are approved and accepted by the court; and the said S. W. Whiting is duly qualified as such according to law, and license is granted by the court to said administrator to sell the perishable property estate.

Clerk's certificate.

STATE OF NORTH CAROLINA,
Wake County:

I, Thomas J. Utley, clerk of the court of pleas and quarter sessions for the county and State aforesaid, certify, that the foregoing is a true and correct copy of the last will and testament of Frances Devereux, deceased, together with the proceedings had thereon, as it appears of record and on file in my office.

I further certify that there has been no inventory or account of sales filed in my office that appears of record.

Given under my hand and seal of office, at office in Raleigh, this 27th day of February, A. D. 1857.

THOMAS J. UTLEY,
Clerk.

Endorsement on unlettered exhibit.

On the back of which exhibit is the following endorsement, to wit, "Admitted. D. G. F."

220 *Exhibit M with answer of T. P. Devereux.*

Copy of loose paper found in the superior court.

At July term, 1852.

WILLIAM D. COOKE }
vs. }
HEIRS, &C. }

On motion, William D. Cooke has leave to withdraw from this suit al-

together, and accordingly his name is stricken therefrom, and he doth in court here surrender and renounce all right and power to qualify or act as the executor of M'r's Frances Devereux, deceased, and so Frederick Nash, and other persons named as executors in both the following papers propounded for probate, do also come into court and surrender and renounce their said right and power to qualify and act as such, and thereupon Thomas P. Devereux, one of the persons named as executor to the paper-writings propounded, is made a party as such upon his consent that he will pay out of the assets all costs incurred up to this term, and all the costs actually incurred by the said William D. Cooke.

Clerk's certificate.

The above is a true copy of a paper now on file in my office, among the papers of William D. Cooke, executor, &c., against the heirs of M'r's Frances Devereux, dec'd.

Witness my hand, at office, this 17th June, 1859.

JAMES A. MOORE,
Clerk of Wake Superior Court.

Endorsement on Exhibit M.

On the back of which exhibit is the following endorsement, to wit, "Admitted. D. G. F."

221 *Exhibit W with answer of T. P. Devereux.*

Statement of the hire and sale of negroes belonging to the estate of M'r's Frances Devereux, deceased.

1850.	Received for hire, Tom and Viney		$75	
	do	Delia	13	
	do	Bessy	25	
	do negroes to G. Devereux		83 75	
1851.	do Tom and Viney		80	
	do Delia		25	
	do negroes to J. Devereux		150	
1852.	do Tom and Viney		75	
	do Delia		27	
	do negroes to J. Devereux		150	
1853.	Sale of Delia		650	
	" " Sally Ann		500	
				$1,853 75
1850.	Paid support woman & children		$97	
	" M'r's Hall		2	
	" physician's bill		15	
	" burying child		3 50	
1851.	" support woman & children		90	
1852.	" support woman & children		90	
				297 50
				½) $1,556 25
				$778 12

Bishop Polk's portion 778 12
Due T. P. Devereux on division of slaves as per statement of referees 418 88

Due Bishop Polk $359 24

S. W. WHITING, *Ex.*

Endorsement on Exhibit W.

On the back of which exhibit is the following endorsement, to wit, "Admitted. D. G. F."

222 *Exhibit K with answer of T. P. Devereux.*

Account of administration of S. W. Whiting.

S. W. Whiting, adm'r,

P. D. asso., in account with estate of M'r's Devereux, deceased.

D'R.

1849. June.	To cash rec'd of T. P. Devereaux, trustee		$16,446 34
	" John Devereux, crop of 1848		1,139
	" sale of house		45
	" cow		10 50
1850.	" hire of Tom and Viney		75
	" sale of bacon		40 81
	" hire of Delia		13
	" J. Devereux, rent of land and purchase of stock, 1849.		2,840 78
	" hire of negroes		83 75
	" do. Delia, 1851		25 00
1851.	" do. W. J. C., 1850		25 00
1852.	" " of negroes, J. Devereux		150 00
	" " Tom & Viney		80 00
	" " negroes, J. Devereux		150 00
	" " Tom and Viney		75 00
	" " Delia		27 00
1853.	" sale of Delia McKinmore		650 00
	" " " Sally Ann S. Whiting		500 00

C'R.

1849.	By cash paid J. Woltnig		$12 8
	" for copying will		25 0
	" Benjamine Perry, a/c		34 6
	" J. Primrose, "		72 6
	" do. "		10 1
	" John S. King, "		10 0
	" W'm Thompson, "		7 5
	" H. J. Patterson, "		25 0
	" J. Woltnig, "		26 2
223	By cash paid E. Smith, a/c		$14 8
	" J. Brown, "		17 3
	" J. M. Towles, "		34 0
	" W. J. Clarke, "		33 5
	" Pastor's salary, "		50 0
	" Kimboo Jones's note		40 3
	" W'm Stronach, "		181 8
	" Williams, Haywood &c., "		54 8
	" J. R. Harrison, "		4 5
	" W'm Thompson, "		35 3
	" Peebles, W. & Davis, "		1 8
	" Wake County taxes, "		8 1
	" D'r Charles E. Johnson, "		15 0
	" Biblical Repository, "		6 0
	" Williams, Haywood & Co.		2 7
	" Bennett T. Blake		10 0
	" M'r Hall		2 0
	" J. McKinmore		2 8
	" do.		15 2
	" Thomas Card		2 5
	" W. H. Putney, taxes		17 2
	" by Adams, for sundries		44 9

	By cash paid W. G. Clarke, for sundries		84 38
1850.	" " support negroes		97 00
	" subscription to church, Pittsboro'		25 00
	" D'r F. J. Haywood's %		617 00
	" note to E. Colburn & int		522 50
	" " W. Murdoch		522 50
	" " W. Murdoch		522 50
	" " Tom March		30 00
	" " Patsey Simpson		12 00
	" Sh'ff of Wake, taxes, 1848		13 36
224	By cash paid Martha Simpson		$11 73
	" M'r's Fuller		65 00
	" E. Colburn, int		67 40
	" Sheriff Bertie, taxes 1849		129 52
	" note to M'r's Wheaton & int		303 36
	" support of woman & children		90 00
	" do. do.		90 00
	" M'r's Wheaton, int. on note		46 50
	" R. P. Finch, C. S. C., bill of cost		88 13

Endorsement on Exhibit K.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit V, with answer of T. P. Devereux.

Assignment to Thomas P. Devereux from Caldwell Institute.

Whereas the trustees of the Caldwell Institute sold to Thomas P. Devereux, esquire, all legacies, rights, and interests to which they might be entitled under any of the testamentary papers left by his mother, the late M'r's Frances Devereux, of the city of Raleigh, for the sum of four thousand dollars, and executed to him a written transfer therefor, bearing date the 1st of January, A. D. 1850, which, however, was not satisfactory to him, and he declined to accept the same, and it was afterwards ordered by the said trustees that a written transfer should be executed by their president for their legacies and interest which should be satisfactory to the said T. P. Devereux:

225 Now, therefore, in consideration of the premises and four thousand dollars secured to be paid to them by the said T. P. Devereux, by bond bearing date the 1st day of January, 1850, the trustees of the Caldwell Institute have bargained and sold, transferred, set over, released, conveyed, and assigned, and by these presents do bargain and sell, transfer, set over, release, convey, and assign to the said Thomas P. Devereux, in his own individual right and for his sole benefit, all and every legacy bequeathed by the late M'r's Frances Devereux, his mother, to the said trustees of the Caldwell Institute, and all interest, right, or claim which the said trustees have or may hereafter have, at law or in equity, mediately or immediately, absolutely or conditionally, to any part of the property of the said M'r's Devereux deceased, in what manner soever said legacies, claim, or interest may accrue or vest in said trustees.

But it is hereby understood and agreed that the said Thomas P. Devereux is to indemnify the said trustees from all liabilities for costs in the suits now pending in Wake court, upon a caveat upon the testamentary papers of Mrs. Devereux, and in all other suits and proceedings in law and equity in the premises, and that all such litiga-

226 tion shall be prosecuted by him, at his own cost and upon his own responsibility.

In witness whereof the said trustees of the Caldwell Institute have hereunto attached their corporate seal, and caused the same to be attested, this 2nd day of September, A. D. 1851.

DRURY LACY,
President Caldwell Institute.

Signed, sealed, and delivered in presence of—
WALTER A. NORWOOD.
JOHN B. WILSON.

Endorsement on Exhibit V.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit U, with answer of T. P. Devereux.

Assignment to Thomas P. Devereux from Board of Foreign Missions of the Presbyterian Church in the United States of America.

To all people to whom these presents shall come, the Board of Foreign Missions of the Presbyterian Church in the United States of America send greeting:

Whereas the said board is entitled to a pecuniary interest under the will of Frances Devereux, late of Raleigh, North Carolina, and whereas Thomas P. Devereux of said Carolina hath offered to purchase the same of the said board, for his own use and benefit, and hath agreed to pay the said board for the same, by his own note for two thousand dollars, at six months from the date of these presents; and whereas
227 the said board have accepted the said offer:

Now know ye that, in execution of the said agreement, and in consideration of the said sum of two thousand dollars, secured to be paid to them as above written, the said Board of Foreign Missions of the Presbyterian Church have bargained and sold, assigned and set over, and by these presents do bargain and sell, assign, and set over to the said Thomas E. Devereux, all their right to the claim and demand in and to the estate of the said Frances Devereux, and under and by virtue of the provisions of the will of the said Frances; to have and to hold the same, and each and every part thereof, to him, the said Thomas, his executors and administrators, for his and their own use and behoof; it being understood that the said Thomas doth hereby acknowledge that he hath received this assignment at his own risk, and without any right of recourse upon the said board by reason of any failure on the part of the personal representatives of the said Frances to adjust and pay the claims of the said board; and that he doth hereby remove, release, and forever quitclaim to the said board all claim of right to such recourse against them.

And the said board doth hereby authorize and empower the said Thomas, in their name, place, and stead, to sue for, ask, and de-
228 mand an account and payment of such sum as may be due to them from the said personal representatives of the said Frances, all expenses of such suit or demand to be at the proper charge of the said Thomas, and not at that of the said board.

In witness whereof we, the said secretaries of the said board, by the direction of the executive committee, and in their behalf, have hereunto

set our hands and seals this 4th day of November, A. D. 1851, at the mission-house, in the city of New York.

WALTER LOWRIE. [SEAL.]
JOHN C. LOWRIE. [SEAL.]

Witness present—
W. W. OAKLEY.
JAMES MACKEAN.

Endorsement on Exhibit U.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit T, with answer of T. P. Devereux.

Assignment to Thomas P. Devereux from the trustees of the Board of Education of the Presbyterian Church in the United States of America.

Whereas M'r's Francis Devereux, deceased, late of Raleigh, North Carolina, left, at the time of her death, two testamentary papers, each purporting to be her last will and testament, in one of which the sum of four thousand dollars is given as a legacy to the trustees of the Board of Education of the Presbyterian Church in the United States of
229 America, and in the other paper the sum of two thousand dollars is given in like manner; and whereas a suit is now pending in Wake court, the purpose of which is to try the question whether either of said papers is in law the last will and testament of M'r's Frances Devereux; and whereas Thomas P. Devereux, a son of M'r's Frances Devereux, hath bought the interest (whatever it may be) of said trustees in the estate of M'r's Devereux:

Now, therefore, know all men by these presents that the trustees of the Board of Education of the Presbyterian Church in the United States of America, for and in consideration of the sum of two thousand dollars, secured to be paid to them by the said Thomas P. Devereux, do hereby assign, convey, set over, and release to the said Thomas P. Devereux all rights and interest which they have to legacies from M'r's Frances Devereux, deceased, and they do hereby empower him, at his own risk and cost, to recover and collect to his own use all interest which the said trustees may have in the estate of the said M'r's Devereux, should it turn out that they are entitled to any legacy or other interest aforesaid.

In witness whereof the said trustees have caused their corporate seal to be affixed to these presents, in the city of Philadelphia, on this
230 the twenty-eighth day of September, A. D. 1850.

Test:

[SEAL OF BOARD OF EDUCATION.] JOEL JONES,
President of the Board of Trustees.

C. VAN RANSELAER, *Secretary.*

Endorsement on Exhibit T.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit S, with answer of T. P. Devereux.

Assignment to Thomas P. Devereux from the trustees of the Board of Missions of the Presbyterian Church in the United States of America.

Whereas M'r's Francis Devereux, deceased, late of Raleigh, North

Carolina, left, at the time of her death, two testamentary papers, each purporting to be her last and testament, in one of which the sum of four thousand dollars is given as a legacy to the trustees of the Board of Missions of the Presbyterian Church in the United States of America, and in the other paper the sum of two thousand dollars is given in like manner. And whereas a suit is now pending in Wake court, the purpose of which is to try the question whether either of said papers is in law the last will and testament of M'r's Devereux, and Thomas P. Devereux, a son of M'r's Frances Devereux, hath bought the interest (whatever it may be) of said trustees in the estate of M'r's Devereux:

231 Now, therefore, know all men by these presents, that the trustees of the Board of Missions of the Presbyterian Church in the United States of America, for and in consideration of the sum of two thousand dollars, secured to be paid to them by the said Thomas P. Devereux, do hereby assign, convey, set over and release to the said Thomas P. Devereux all right and interest which they have to legacies from M'r's Frances Devereux, deceased, and they do hereby empower him, at his own risk and cost, to recover and collect, to his own use, all interest which the said trustees may have in the estate of the said M'r's Devereux, should it turn out that they are entitled to any legacy or other interest aforesaid.

In witness whereof, the said trustees have caused their corporate seal to be affixed to these presents, in the city of Philadelphia, on this first day of October, A. D. eighteen hundred and fifty.

[SEAL OF BOARD.] WILLIAM VASSAUSEUR,
President of the Board of Trustees.

A. SYMINGTON,
Secretary.

Endorsement on Exhibit S.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit R, with answer of T. P. Devereux.

Assignment to Thomas P. Devereux from Clement C. Read, as trustee of the Union Theological Seminary.

232 Whereas Frances Devereux, late of Raleigh, in the State of North Carolina, by her last will and testament, duly admitted to probate in the county of Wake and State aforesaid, gave and bequeathed to the undersigned, Clement C. Read, the sum of four thousand dollars, in trust, for the benefit of the Union Theological Seminary, in the county of Prince Edward and State of Virginia, as will more particularly appear by reference to the said last will and testament of the said Frances Devereux; and whereas it has been agreed by and between the said Clement C. Read, acting as well on behalf of himself as of the said seminary, and Thomas P. Devereux, of Halifax, in the State of North Carolina, that the said Read should, in consideration of the sum of two thousand dollars, paid or secured to be paid to him by the said Thomas P. Devereux, assign to the said Thomas all his right, title and claim (that is to say, all the right, title and claim of the said Read) in and to the said legacy of four thousand dollars in the said last will and testament mentioned; but upon the express understanding, agreement and condition, that neither the said Clement C. Read, nor the trustees of the Union Theological Seminary, in the county of Prince Edward, aforesaid, shall be

233 held responsible to or by the said Thomas P. Devereux, his executors, administrators or assigns, in any wise, or to any extent, in the event of his or their failure to collect, recover, or realize the said legacy of four thousand dollars, or any part thereof, and that the said Read and the said seminary are to be put to no expense or cost for any suit or suits that may be prosecuted or defended, in relation to the said legacy, but the same shall be borne by the said Thomas P. Devereux, his personal representatives or assigns, without any recourse whatsoever, or any account against the said Read or the said seminary.

Now, on compliance on his part with this agreement, and in consideration of the said sum of two thousand dollars, to be paid to the said Read by the said Devereux, as aforesaid, and for other considerations him thereunto moving, the said Clement C. Read doth hereby grant, assign, set over, and convey to the said Thomas P. Devereux, his executors, administrators, and assigns, all his (the said Read's) right, title, interest, and claim in and to the said four thousand dollars, in the said last will and testament bequeathed as aforesaid, with whatever interest may be due thereon, if any, for the only proper use and behoof of him, the said Thomas P. Devereux, his executors, administrators, or as-
234 signs, but without any right of recourse whatever, or to any extent, against the said Read, or the said theological seminary, or the trustees thereof, in the event the said legacy of four thousand dollars, or any part thereof, should fail to be recovered by the said Devereux, his executors, or assigns, and with the distinct agreement in the above recital set forth.

And the said Clement C. Read doth hereby authorize and empower the said Thomas P. Devereux, his executors, and administrators and assigns, to ask, demand, and sue for, the said legacy, in the proper name of him, the said Read, and for the benefit of the said Thomas, so that all suits and actions in this behalf shall be at the cost and charge of the said Devereux, without any liability on the part of the said Read, or the trustees of the theological seminary aforesaid, for the cost or charges of prosecuting or defending any such actions. And it is distinctly understood, that by this assignment it is intended to vest in the said assignee all the interest, both legal and equitable, of the said Read in the said legacy, but not to impose any obligation on him whatever, or make him liable to any recourse whatever. As witness the following signatures, and seal of the said Clement C. Read hereunto attached, this 24th day of December, A. D. 1858.

CLEMENT C. READ. [SEAL.]

Witness:
AUB. VAUGHAN.
L. Z. VENABLE.

235 *Probate.*

STATE OF VIRGINIA,
County of Prince Edward, to wit:

I, F. N. Watkins, a notary public for the county and State aforesaid, do certify that Clement C. Read, whose name is signed to the writing above, acknowledged the same before me in my county aforesaid. From under my hand this 27th December, 1858.

F. N. WATKINS, *N. P.*

Endorsement on Exhibit R.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Exhibit N, with answer of T. P. Devereux.

Bill of sale for Tom and Viney to Thomas P. Devereux, from trustees of the Presbyterian church, in the city of Raleigh, N. C.

Know all men by these presents, that we, S. W. Whiting and J. R. Harrison, P. Bubee, R. Maddox, R. B. Scovell, J. Brown, and W. J. Clarke, trustees of the Presbyterian Church in the city of Raleigh, have bargained and sold, and by these presents do bargain and sell, to T. P. Devereux, of the county of Halifax, all the right, title, claim, and demand, which the said Presbyterian church hath, or can have, under the will of the late M'r's F. Devereux, in and to the following negroes, to wit, Tom, aged about fifty-seven; Viney, aged about fifty-three; Priscilla, aged about thirty, and her boy-children, George, Henry, and Robert; to have and to hold the said negroes to him, the said Devereux,
236 his heirs, executors and administrators forever.

In witness whereof, the said trustees have hereunto set their hands, and affixed their private seals, there being no seal of the said corporation, this 29th day of August, A. D. 1851.

S. W. WHITING, [SEAL.]
J. R. HARRISON. [SEAL.]
R. E. MADDOX. [SEAL.]
W. J. CLARKE. [SEAL.]

Witness: C. DEWEY, as to the signatures of S. W. Whiting, J. R. Harrison, R. E. Maddox, and W. J. Clarke.

R. B. SEAWELL. [SEAL.]

Witness: THO'S W. DEWEY, as to the signature of R. B. Seawell.

Endorsement on Exhibit N.

On the back of which exhibit is the following endorsement, to wit, "Admitted. D. G. F."

Exhibit Q with answer of T. P. Devereux.

Assignment of right to purchase negroes to Thomas P. Devereux from Rev. Leonidas Polk.

Know all men by these presents, that I, Leonidas Polk, of the State of Louisiana, for and in consideration of the sum of five dollars, to me in hand paid by Thomas P. Devereux, of the county of Halifax, and State of North Carolina, have bargained and sold, assigned and set over to the said Thomas, all or any right, title, claim, interest or demand, which I have, hold, or am entitled to, under and by virtue of the will of Frances Devereux, late of Raleigh, in the said State of North Carolina, deceased, and particularly any right I may have, under
237 and by virtue of the said will, to purchase the negroes of the said testatrix. To have and to hold all such right, to him the said Thomas, his executors and administrators forever.

In witness whereof, I have hereunto set my hand and affixed my seal this 19th day of July, A. D. 1852.

LEONIDAS POLK. [SEAL.]

Signed, sealed and delivered in presence of—
S. A. SMITH.
S. C. DEVEREUX.

Endorsement on Exhibit Q.

On the back of which exhibit is the following endorsement, to wit, "Admitted. D. G. F."

Exhibit P with answer of T. P. Devereux.

Assignment of right to purchase negroes to Thomas P. Devereux from John Devereux.

Know all men by these presents, that I, John Devereux, of the county of Bertie, and State of North Carolina, for and in consideration of the sum of five dollars, to me in hand paid by Thomas P. Devereux, of the county of Halifax, in the said State, have bargained and sold, assigned and set over to the said Thomas all or any right, title, claim, interest, or demand, which I have, hold or am entitled to, under and by virtue of the will of Frances Devereux, late of Raleigh, in the said State, deceased, and particularly any right I may have, under and by virtue of said will, to purchase the negroes of the said testatrix. To have
238 and to hold all such right, to him, his executors and administrators forever.

In witness whereof, I have hereunto set my hand and affixed my seal this 19th day of July, A. D. 1852.

J. DEVEREUX. [SEAL.]

Signed, sealed and delivered in presence of—
S. C. DEVEREUX.
S. A. SMITH.

Endorsement on Exhibit P.

On the back of which exhibit is the following endorsement, to wit, "Admitted. D. G. F."

Exhibit O with answer of T. P. Devereux.

Deed from Thomas P. Devereux to Lucius C. Duncan, in trust, for Frances Ann Polk, dated 13th October, A. D. 1852.

To all persons to whom these presents shall come, Thomas P. Devereux, of Halifax County, in the State of North Carolina, sendeth greeting:

Whereas the said Thomas by writing obligatory, under his hand and seal, bearing date the 19th day of July last, for certain good and valuable causes and considerations him thereunto moving, covenanted to convey to Lucius C. Duncan, of New Orleans, in the State of Louisiana, one-half the negroes of which Frances Devereux, late of Raleigh, in North Carolina, died possessed, deducting from such half, negroes equal in value to the sum of three thousand two hundred and forty-

eight dollars thirty-eight cents, to have and to hold the said ne-
239 groes in absolute property, to him, his executors and administrators, in trust for the sole and separate use of Frances A. Polk, wife of the Right Reverend Leonidas Polk, of said Louisiana, and sister of the said Thomas P. Devereux; also to assign and convey to the said Lucius C. Duncan a promissory note or single bill of the said Right Reverend Leonidas for the said sum of three thousand two hundred and forty-eight dollars thirty-eight cents, also upon the same trusts, so as to vest beneficially in said Frances one-half of the value of said negroes.

Now, whereas, also, the said negroes have been valued by competent persons, excepting two, as hereinafter mentioned, and the said valuation amounts in all to the sum of nineteen thousand nine hundred and ninety-one dollars, one-half of which, to wit, the sum of nine thousand nine hundred and ninety-five dollars and fifty cents, is to be assigned to the said Lucius C. in manner aforesaid, to wit, the sum of three thousand two hundred and forty-eight dollars thirty-eight cents, in the said writing obligatory of the said Right Reverend Leonidas, and the sum of six thousand seven hundred and eleven dollars
240 twelve cents, specifically in negroes.

Now, know ye, that the said Thomas, for and in consideration of the premises, and in performance of the said obligation, and also in consideration of the sum of fifty cents to him in hand paid by the said Lucius C. Duncan, hath heretofore assigned and set over to the said Lucius the said writing obligatory of the said Right Reverend Leonidas, and doth hereby upon said considerations, assign and set over to the said Lucius the following negroes, to wit, Solomon, valued at $400; Charity, his wife, valued at $75, and their children, Ben., valued at $650; Louisa, valued at $430; Charles, valued at $500; Sylvia, valued at $350; Isaac, valued at $200; Alston, valued at $500; Lousine, his wife, valued at $175, and their children, John, valued at $500; Irvin, valued at $300; Luanza, valued at $250; Hoban, valued at $725; Melissa, his wife, $450, and child, Joshua, valued at $100 less than nothing; Caleb, valued at $825; Burrell, valued at $900; which said negroes have, by the persons selected to value them, been assessed to the sum of seven thousand one hundred and thirty dollars, leaving
241 to be paid to the said Thomas the sum of four hundred and eighteen dollars eighty-eight cents, for equality of division.

And whereas, also, it has been decided by the parties interested in said division, that negroes Delia and Sally, part of said lot of negroes, should be sold, the said Thomas doth hereby covenant, grant, and agree with the said Lucius upon a sale of said two negroes, to account with him for the one-half thereof, in a manner to accomplish fully the said trust and agreement, to have and to hold the said negroes and funds, to him, the said Lucius C. Duncan, his executors, administrators, and assigns forever, upon trust, first to respond to any claim that may be established against the said negroes and fund, by reason of any succession to the estate of the said testatrix, or any construction of her will, and secondly, upon trust to hold the same for the sole and separate use of the said Frances A. Polk, free from and clear of the debts, contracts, or engagements of her husband, the said Right Reverend Leonidas Polk.

And whereas, also, negro Burrell, one of the now hereby conveyed negroes, valued at nine hundred dollars, had, at the time of such valuation, absconded, and is not now in possession, be it known
242 that if, by reason of his never coming to the possession of the said Lucius, or any other person, for the benefit of the said es-

tate, and the said value shall be lost to the said trust-estate, then, and in that event, the said loss is, as to one-half thereof, to be borne by the said Thomas P. Devereux. Given under my hand and seal, at Raleigh, in the county of Wake, in said State of North Carolina, this the 13th day of October, A. D. 1852.

T. P. DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
SOPHIA C. DEVEREUX.
K. RAYNER.

Endorsement on Exhibit O.

On the back of which exhibit is the following endorsement, to wit, "Admitted. D. G. F."

Exhibit L, with answer of T. P. Devereux.

Appointment of S. W. Whiting administrator pendente lite, upon the estate of F. Devereux, dec'd.

STATE OF NORTH CAROLINA,
Wake County:

At a court of pleas and quarter sessions, begun and held for the county of Wake, at the court-house in the city of Raleigh, on the third Monday of August, it being the 20th day of said month, A. D. 1849, when were present, presiding and holding said court, the worshipful Johnson Busbee, Stephen Stephenson, and William F. Smith, esquires, during
243 the session of said court the following proceedings were had, to wit:

William D. Cooke brings into court two paper-writings, one dated 20th August, 1848, and attested by William J. Clarke and Catharine E. Fuller; the other dated 23rd December, 1847, attested by George Simpson and Daniel Dupree, which purport to be the last will of Frances Devereux, deceased, the said Cooke being one of the executors therein named.

The said paper-writings are filed, and upon motion of the said William D. Cooke, executor as aforesaid, it is ordered, that subpœnas issue to the subscribing witnesses, and that notice issue to Thomas P. Devereux, Leonidas Polk and his wife Frances, and to Elizabeth J. and Georgina P. Devereux, infant orphans, children of George P. Devereux, deceased, heirs at law, next of kin of said Frances Devereux, deceased, citing them to be and appear at next court, to hear the proceedings of this court in respect to the probate of the said paper-writings as the last will of Frances Devereux, deceased. And the said Elizabeth J. and Georgina P. Devereux, having no guardian in this State, at the instance of their mother, who resides in Connecticut with the said children, it is ordered that William H. Haywood, junior, be appointed guardian pro hac
244 vice, and to defend their rights and interests in this suit, &c.

On motion, it is ordered by the court, that S. W. Whiting be appointed administrator pendente lite upon the estate of M'r's Frances Devereux, deceased, who enters into bond in the sum of twenty-five thousand dollars, with Thomas P. Devereux and William J. Clarke as his sureties, who are approved and accepted by the court, and the said

S. W. Whiting is duly qualified as administrator aforesaid, according to law.

Clerk's certificate.

STATE OF NORTH CAROLINA,
Wake County:

I, Thomas J. Utley, clerk of the court of pleas and quarter sessions for said county, certify that the foregoing is a true copy of the proceedings had in said court, relative to the filing of two paper-writings, purporting to be the last will and testament of Frances Devereux, deceased, together with a true copy of the proceedings had in said court relative to the appointment of S. W. Whiting administrator pendente lite, upon the estate of said Frances Devereux, deceased, which appears of record in my office.

Given under my hand and seal of office, at office in Raleigh, the 27th day of June, A. D. 1859.

THOMAS J. UTLEY, *Clerk.*

245 and appointment of S. W. Whiting administrator, with the will annexed, upon the estate of F. Devereux, deceased.

STATE OF NORTH CAROLINA,
Wake County:

Third Monday of November, A. D. 1852, the 16th day.

Be it remembered that a court of pleas and quarter sessions is this day opened and held for the County of Wake aforesaid, at the court-house in the city of Raleigh, when were present, presiding and holding said court, the worshipful William R. Poole, Johnson Busbee, and Thomas G. Whitaker, esquires, when the following proceedings were had, to wit:

Thomas P. Devereux, one of the executors named in the last will and testament of M'r's Frances Devereux, deceased, appears in open court, by his attorney in fact, George W. Mordecai, and renounces his right to qualify as executor aforesaid, Frederick Nash, senior, John Primrose, and William D. Cooke, the other executors named in the said last will and testament, having heretofore renounced their right to qualify as such. On motion, S. W. Whiting is appointed administrator upon the estate of M'r's Frances Devereux, deceased, with the will annexed, and he enters into bond in the sum of fifty thousand dollars, with George W. Mordecai and Thomas P. Devereux as his sureties, who are
246 approved and accepted by the court, and the said S. W. Whiting is duly qualified as such, according to law, and license is granted by the court to said administrator to sell the perishable estate.

Clerk's certificate.

STATE OF NORTH CAROLINA,
Wake County:

I, Thomas J. Utley, clerk of the court of pleas and quarter sessions for said county, certify that the foregoing is a true copy of the proceedings had in said court relative to the appointment of S. W. Whiting as

administrator, with the will annexed, of Frances Devereux, deceased, which is of record in my office. I further certify that said bond was duly executed, and is now on file in my office.

Given under my hand and seal of office, at office in Raleigh, the 17th day of June, A. D. 1859.

[SEAL.] THOMAS J. UTLEY, *Clerk.*

Endorsement on Exhibit L.

On the back of which exhibit is the following endorsement, to wit: "Admitted. D. G. F."

Filing of exceptions to answer.

And afterwards, during the same term, the plaintiffs aforesaid, by their attorneys aforesaid, file their exceptions to the answer of the defendant Thomas P. Devereux, in the words and figures following, to wit:

Exceptions.

247 ELIZABETH J. DEVEREUX UMSTED AND Georgiya P. Devereux, complainants,
vs.
THOMAS P. DEVEREUX AND LEONID'S J. POLK, and Frances Ann Polk, his wife, defendants. } In equity.

In the circuit court of the United States for the district of North Carolina.

Exceptions taken by the said complainants to the insufficient answer of Thomas P. Devereux, one of said defendants.

First. For that the said defendant has not, to the best of his knowledge, remembrance, information, and belief, answered and set forth whether, on or near the 7th day of October, A. D. 1852, the said Thomas P. Devereux, before the appointment of Whiting as administrator, with the will annexed, caused certain slaves belonging to the estate of M'r's Frances Devereux, deceased, amounting to the number of fifty-seven, to be appraised and divided between the said Devereux and other persons; and whether the said Thomas P. Devereux has now in his possession, or in the possession of his attorneys or agents, an original paper, or a copy thereof, containing the details of said appraisal and division; and what are the contents of said original paper, or the copy thereof.

2ndly. For that the said defendant has not, in the manner aforesaid, answered and set forth what disposition he has made of the fifty thousand dollars, and the annual sum of three thousand dollars, which
248 the said defendant was chargeable with, under the deed of July 3rd, 1839, referred to in the complainants' bill as Exhibit (A), but absolutely declines to make any discovery in respect thereto.

Thirdly. For that the said defendant has not, in the manner aforesaid, answered and set forth the tenor and contents of certain paper-writings obtained from the administrator, with the will annexed, Whiting, which he admits he has now in his possession and under his control, and which he admits have reference to the management of the aforesaid charge of $50,000, but absolutely refuses to furnish these complainants with said paper-writings or copies thereof.

In all which particulars the said complainants except to the answer of said defendant, and humbly pray that said defendant may be compelled to put in a sufficient answer thereto.

This 28th November, 1859.

DANIEL G. FOWLE.
ED. GRAHAM HAYWOOD,
Sol'rs for Compl's.

Filing of amendments to answer by T. P. Devereux.

And afterwards, during the same term, the defendant, Thomas P. Devereux, by his attorneys aforesaid, files amendments to his aforesaid answer in the words and figures following, to wit:

Amendments to answer.

249 In the circuit court of the U. S. for the district of North Carolina.
In equity, November term, 1859.

UMSTED AND WIFE AND OTHERS
against
THOMAS P. DEVEREUX AND OTHERS.

The further and amended answer of the said Thomas P. Devereux to certain of the matters embraced in exceptions taken by the plaintiffs to the sufficiency of the original answer of the said defendant..

This defendant, for answer to the matter embraced in the first of the exceptions filed by the plaintiffs to the original answer of this defendant, saith, that he has filed herewith a copy of the valuation and division of the slaves of the said Frances, made by Kenneth Rayner and John Devereux, the original whereof this defendant hath in his possession, and which this defendant submits to produce when thereunto ordered by your honor.

And this defendant saith the originals of the said valuation and division, and of the copy of the deed of this defendant to Lucius Duncan, as trustee for the said Frances Polk, a copy of which, marked "O," is filed as an exhibit to the original answer of this defendant, are, to the best of this defendant's knowledge and belief, the only papers in existence connected with the said valuation and division.

250 But this defendant, further answering, saith that it is not strictly true that the said valuation and division was made before the administration of the said Whiting on the estate of the said Frances, as it appears is intended to be intimated in and by the said exception; for he saith that the said Whiting was appointed administrator pendente lite of the said Frances at a county court of Wake, begun on the third Monday of August, 1849, and, as appears by the exhibit filed with this defendant's original answer, marked "K," shortly thereafter possessed himself of the property and estate of his intestate, proceeded with the payment and collection of the debts, and, as this defendant believes, had fully administered upon the said estate, excepting the payment of the legacies, before the 13th of October, 1852.

The issue respecting the will of the said Frances was finally decided in July, 1852, and at the date of the said valuation and division all litigation in respect thereof was at an end; and this defendant believes and avers that the subsequent appointment of the said Whiting, at No-

vember term, 1852, as administrator, with the will of the said Frances annexed, was for the completion of the said division by the sale of two negro slaves, and it being thought to be necessary, upon the ex-
251 piration of the grant of administration pendente lite, and this defendant believes and is confident, that not a single debt of the said Frances remained unpaid at the date of the letters of administration with the will annexed.

This defendant saith that according to the recollection of this defendant, upon a visit of the defendant, the Right Reverend Leonidas Polk, with his wife, to the city of Raleigh, at the date of the said valuation and division, this defendant stated to them the object and intention of this defendant, in his whole conduct in respect to the estate of the testatrix, Frances, and expressed his willingness, as the estate was then for the purposes of this defendant substantially closed, to divide the negroes between this defendant and the said Frances. This defendant recollects the observation of the said Frances, that, as the arrangement amounted to a gift from this defendant to her, she and her husband could not object to anything this defendant might wish to do.

The said Kenneth Rayner and John Devereux were, by the defendant Leonidas, suggested as valuers. This defendant objected to them as connected, but upon the representation of the said Leonidas and Frances that the said John, although the son of this defendant, was the nephew of the said Frances, and the said Kenneth was the
252 brother-in-law of the said Leonidas, this defendant waived his objection, and the valuation and division was made, as set forth in the said exhibit.

As to the second exception of the plaintiffs this defendant saith that if the plaintiffs require of this defendant an account of the fund of $50,000 mentioned in the pleadings as in the hands of this defendant, this defendant, for reasons mentioned in his original answer, most respectfully declines to make any discovery in respect thereto. If the said exception alludes to the annual interest on the said sum, this defendant, submitting and insisting that as to the said interest the plaintiffs have no right to any discovery and account from this defendant, nevertheless, saith that he is willing to state and doth state for the satisfaction of the plaintiffs, that the whole accruing interest was paid to the said testatrix by this defendant, in cash, every year of her life, from the date of the deed of July, 1839, a copy of which was filed by the plaintiffs as an exhibit to their bill, marked "A," up to her death.

As to the third of the plaintiffs' exceptions, this defendant saith that he did not receive any paper from the said Whiting connected with the estate of the said testatrix, Frances, but did receive some papers
253 connected with the said sum of $50,000; and this defendant most respectfully insists that, as the plaintiffs have no claim to any part of the said sum of $50,000, which may have been in the hands of this defendant, they, of course, have no right to a discovery of any papers in the hands of this defendant connected therewith.

T. P. DEVEREUX.

WILLIAM J. SAUNDERS, *Clerk.*

Unlettered exhibit, with amendments to answer.

Valuation of negroes of Mrs. F. Devereux, deceased.

On a valuation of the negroes belonging to the late Mrs. Frances Devereux, by Messrs. W. I. Hill, of Halifax, and T. Jones and I. J.

Williams, of Martin, it was found that there were on the Roanoke 54 in number, and in Raleigh 3 in number.

Upon agreement by the parties, Messrs. John Devereux and K. Rayner proceeded this day to allot the negroes in families between Mr. Thomas P. Devereux and L. Polk, in such a way as to divide the negroes into two equal portions, and then from Bishop Polk's lot to set off to Mr. T. P. Devereux negroes enough to pay off a bond, payable by the said Polk to the said Devereux, for $3,284.38, as previously agreed on by the parties.

The whole number of negroes, excepting two, Delia and Sally,
254 exclusive of four classed as expensive, were valued at $20,441; deducting $450 for expenses leaves $19,991; one-half of which is $9,995.50. From this last sum deduct $3,284.38, due by Bishop Polk to Mr. Devereux, and we have $6,711.12, the amount in negroes to be set apart to Bishop Polk. We accordingly set apart to Bishop Polk the following negroes, to wit:

Solomon and family	7	$2,605
Alston and family	5	1,725
Caleb	1	825
Hoburn and family	3	1,075
Burwell	1	900
	17	7,130

And to M'r T. P. Devereux the following:

Allston and family	8	3,159
Davy and family	8	3,008
Bird and family	6	1,895
Peter and family	3	1,013
Tom and family	5	1,645
Katy and family	3	725
Millbury	1	600
Nancy	1	50
Sip	1	450
Sarah	1	416
		$12,961
Old Jacob off to keep	1	100
	38	$12,861

Owing to the division having to be made in families, and our not be-
ing able to make it exactly equal to both parties, we find that
255 Bishop Polk has to pay to M'r Devereux $418.88, said Polk's share of the negroes exceeding the sum to which he is entitled by that amount.

It is further agreed on by us, as representatives of the parties interested, that negroes Delia and Sally are to be sold, and Bishop Polk's half of the proceeds of the sale to be appropriated to the payment of this balance to M'r Devereux, and to paying the expenses of transporting his negroes to Louisiana.

It is further agreed, that in case anything should happen to Burwell (who is now run away), that the loss sustained shall be equally borne by M'r Devereux and Bishop Polk.

October 13th, 1852.

K. RAYNER.
J. DEVEREUX.

Endorsement on unlettered exhibit.

On the back of which exhibit is the following endorsement, to wit, "No proof required. D. G. F."

Filing of replication.

And afterwards, during the same term, the plaintiffs aforesaid, by their attorneys aforesaid, file their replication to said answer as amended, in the words and figures following, to wit:

Replication.

Circuit court of the United States for the district of North Carolina. In equity. December 1st, A. D. 1859.

ELIZABETH J. DEVEREUX UMSTED AND Georgian P. Devereux, complainants,
vs.
256 THOMAS P. DEVEREUX AND LEONIDAS J. Polk and wife, Frances Ann Polk, defendants.

The joint and several replication of the said complainants to the several answer of the defendant Thomas P. Devereux:

These replicants and each of them, saving and reserving to themselves and each of them all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies in the answer of the said defendant contained, for replication thereunto say, that they and each of them do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law, to be replied unto by these replicants and each of them, without that, that any other matter or thing in the said answer contained material and effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things these replicants and each of
257 them are ready to aver, maintain, and prove, as this honorable court shall direct, and humbly pray, as in and by their said bill they have already prayed.

DANIEL G. FOWLE,
ED. GRAHAM HAYWOOD,
Sol'rs for Compl'ts.

Proceedings at June term, A. D. 1860.

And be it remembered, that afterwards, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room in the city of Raleigh, in the district aforesaid, before the honorable Asa Biggs, district judge, presiding, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and sixty, and of our Independence the eighty-third year, being the fourth day of said month, came the parties aforesaid by their attorneys aforesaid.

Temporary withdrawal of replication to allow defendant to amend his answer.

And the plaintiffs, by their attorneys aforesaid, consent to withdraw temporarily their replication aforesaid, in order to allow the defendant Thomas P. Devereux to file an additional amendment to his aforesaid answer.

Filing of amendment to answer by T. P. Devereux.

Whereupon the defendant Thomas P. Devereux, by his attorneys aforesaid, files an additional amendment to his answer aforesaid, in the words and figures following, to wit:

258 *Second amended answer of T. P. Devereux.*

The amendment to the answer of Thomas P. Devereux to the bill of complaint of Frank Q. Umsted and others against this defendant and others.

This defendant, further answering, saith, it is true the said slaves of the estate of the testatrix, except such as were afterwards sold by the said Whiting, were alloted in October of the year 1852, between this defendant and the defendant M'r's Polk. The said slaves were then in the possession of this defendant and his son John Devereux, upon hire for that year. Said allotment was made by the permission and with the consent of the said Whiting, who was then administrator pendente lite, and immediately after the determination of the suit, respecting the papers propounded as the wills of the said Frances had agreed to become her administrator with the will annexed.

After the allotment, which was merely a valuation and division on paper, without removing the slaves, they continued at their respective places of abode 'till the end of the year, when the division had practical effect.

It is true that he assigned his right and interest in one-half of said slaves to Lucius Duncan as aforesaid, for the reasons aforesaid, and because he thought by reason of the matters stated he would
259 be well entitled to all of them.

And this defendant saith, that after the said Whiting became administrator at November sessions, 1852, he assented and ratified the division, and allowed said slaves to pass into the possession of this defendant and the defendant M'r's Polk, this defendant agreeing to save said Whiting harmless against all demands on account of the legacies bequeathed and the debts of the estate unpaid, if there might be any, the said Whiting submitting at the time to the construction of the will of the said Frances, that he had no right to demand of this defendant the payment of any portion of the residue of the said sum of $50,000 which had remained unpaid to the testatrix.

And this defendant saith, that ever after the said 1st day of January, 1853, this defendant hath held, and he is informed and believes his co-defendants have held said slaves adversely against the claim and right of the said Whiting as administrator aforesaid, and all other persons whatsoever, and that for this reason, by virtue of sections 3 and 20, of chapter 65, of the revised code, and sections 3 and 18, of chapter 65, of the revised statutes, this defendant and his co-defendants had, at
260 the commencement of this suit, a perfect title to the said slaves against both of the plaintiffs.

And this defendant further saith that if, for any reason, he and his co-defendants, or either of them, can by construction be held to have been trustees for the plaintiffs, or either of them, the plaintiff, Elizabeth, having come to full age in August, 1853, is barred of all demand against this defendant and his co-defendants, by reason of the enactments contained in the sections aforesaid of the said Code and Revised Statutes, and this defendant had acquired a perfect right, as against her, to the said slaves.

T. P. DEVEREUX.

STATE OF NORTH CAROLINA,
Halifax County:

Personally appeared before me, John Anthony, clerk and master in equity for the county of Halifax, Thomas P. Devereux, and made oath in due form of law that the several matters of fact stated in the foregoing answer which were within his knowledge are true, and the residue he believes to be true.

In witness whereof the said clerk and master hath hereunto set his hand & affixed his seal of office this 12th day of February, A. D. 1860.

[SEAL.] JOHN ANTHONY, *C., M. E.*

261 *Replication refiled.*

Whereupon the plaintiffs, by their attorneys aforesaid, again file their aforesaid replication to the aforesaid answer of the defendant, Thomas P. Devereux, and to all the amendments thereto.

Prosecution bond given by the plff's excepted to.

And thereupon the defendant, T. P. Devereux, by his attorneys aforesaid, excepts to the prosecution bond hereinbefore filed by the plaintiffs, because the same is signed and sealed by two attorneys of this court, which exception is sustained by the court, and the plaintiffs are required to file a new prosecution-bond.

New prosecution-bond filed by plff's.

Whereupon the said plaintiffs, now and here, in open court, file their new prosecution-bond, which is approved by the court, in the words & figures following, to wit:

Prosecution-bond.

Know all men by these presents, that we bind ourselves to pay Thomas P. Devereux, Leonidas J. Polk, & Frances Ann, his wife, the sum of three hundred dollars. Witness our hands & seals, this May 3rd, 1860.

The condition of the above obligation is such, that whereas a suit is now pending in the circuit court of the U. S. for the district of North Carolina, in which Elizabeth J. D. Umsted and Georgina P. Devereux are plaintiffs and the above obligees are defendants. Now, if the said suit shall be prosecuted with effect, or in case of failure, the costs of the same be paid, then this bond to be void, otherwise to remain in full force & effect.

ELIZABETH J. D. UMSTED,
By D. G. FOWLE, *Att'y.* [SEAL.]
GEORGINA P. DEVEREUX, [SEAL.]
" JOHN G. WILLIAMS, *Att'y.* [SEAL.]

262 *Proceedings at November term, A. D.* 1860.

Be it remembered, that at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room in the city of Raleigh, in the district aforesaid, before the honorable Asa Biggs, district judge, presiding, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and sixty, and of our Independence the eighty-fifth year, the same being the twenty-sixth day of said month, came the parties aforesaid by their attorneys aforesaid.

Cause set down for hearing.

Whereupon the following proceedings are had in the cause of—

FRANK G. Q. UMSTED AND ELIZABETH J. D. Umsted, his wife, and Georgina P. Devereux, complainants,
against
THOMAS P. DEVEREUX, LEONIDAS J. POLK, AND Frances Ann Polk, his wife, defendants.

On motion of the plaintiffs, by their counsel aforesaid, made in open court here, it is ordered that this cause be set down, and it is hereby set down, to be heard upon the pleadings, exhibits, and proofs herein, and that the same be heard before us next after the hearings already appointed at the next term of this court, to be held on the first Monday in June, in the year of our Lord one thousand eight hundred & sixty-one.

263 *Proceedings at June term, A. D.* 1866.

And afterwards, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the honorable George W. Brooks, district judges presiding, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and sixty-six, and of our Independence the ninetieth year, the same being the fourth day of said month, come the plaintiffs aforesaid by their attorneys aforesaid.

Motion to reinstate cause on docket.

And suggested to the court now here, that by reason of the late civil war and the interruption consequent thereon in the proceedings of this court, their aforesaid cause no longer appeared upon the docket thereof, and thereupon moved the court to allow the said cause to be reinstated on the docket and among the records of the court, in the same state and condition, in all respects, in which it stood and was at the November term, A. D. 1860, the same being the last term of the circuit court of the United States held for the district of North Carolina.

Motion allowed.

Which motion is accordingly allowed by the court, and the said cause is forthwith reinstated upon the docket and among the records of this

court in the same state and condition, in all respects, in which it stood and was at November term thereof, A. D. 1860.

264 *Death and marriage of parties suggested.*

Whereupon the following proceedings are had in the cause of—

FRANK G. Q. UMSTED AND ELIZABETH J. D. Umsted, his wife, and Georgina P. Devereux, complainants.
against.
THOMAS P. DEVEREUX, LEONIDAS J. POLK, AND Frances Ann Polk, his wife, defendants.

The death of the plaintiff Frank G. Q. Umsted and the intermarriage of the plaintiff Elizabeth J. D. with Grinfill Blake; also the intermarriage of the plaintiff Georgina P. with John Townsend; also the death of the defendant Leonidas J. Polk, are suggested to the court here, and because the court here are not yet advised what decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the last Monday in November, A. D. 1866.

Proceedings at November term, A. D. 1866.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the honorable George W. Brooks, district judge, presiding, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and sixty-six, and of our Independence the ninety-first year, the same being the twenty-sixth day of
265 said month, it appears to the court that the proper parties interested in the aforesaid cause as plaintiffs have not yet revived their suit against the defendant T. P. Devereux, and because the court here are not yet advised what decree to make of and upon the premises, a day is given to the said defendant, before the court here, on the first Monday in June, A. D. 1867.

Filing of bill of revivor.

And be it remembered that afterwards, to wit, on the 13th day of May, in the year of our Lord one thousand eight hundred and sixty-seven, at the office of the clerk of the United States circuit court for the district of North Carolina, in the city of Raleigh, in the district aforesaid, came the aforesaid Grinfill Blake and Elizabeth G. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, by their attorneys, Ed. Graham Haywood and Samuel F. Phillips, and file in the office of said clerk their bill of revivor against the defendant, Thomas P. Devereux; and also sue out their subpœna in equity against the said Thomas P. Devereux, which said bill of revivor and subpœna are in the words and figures following, to wit:

Bill of revivor.

To the honorable the judges of the circuit court of the United States within and for the district of North Carolina, sitting in equity:

Humbly complaining, show unto your honors your orators and

266 Yoratrixes, Grinfill Blake, a citizen of the State of New York, and Elizabeth J. Devereux Blake, his wife, and John Townsend, a citizen of the State of Connecticut, and Georgina P. Townsend, his wife, that on or about the 26th day of March, A. D. 1859, your oratrixes, of whom the first above-mentioned was then named Elizabeth J. Devereux Umsted, and the latter, Georgina P. Devereux, by their said names, and together with Frank G. Q. Umsted, the then husband of the said Elizabeth, exhibited their original bill of complaint in this honorable court against Thomas P. Devereux, then a citizen of the State of North Carolina, and Leonidas Polk, then a citizen of the State of Louisiana, and Frances Ann Polk, his wife, as defendants thereto, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying, &c.

And your orators and oratrixes further shew that the said defendant, Thomas P. Devereux, being duly served with process of subpœna, appeared, and the said Leonidas Polk, and wife, Frances, being absent beyond the jurisdiction of this court were not served with process, whereupon the cause proceeded against the said Thomas P. Devereux alone.

And at June term, 1859, of this court it appearing that said Frank G. Q. Umsted had previously died, such death was suggested, and
267 the cause proceeded in the names of the said Elizabeth and the said Georgina alone. And at the same term the said Thomas put in a demurrer to the said original bill, which at same term was set for hearing by consent and also argued and overruled without costs, and the said defendant ordered to answer; and afterwards the said defendant Thomas P. Devereux put in his answer to the said original bill, as in and by, &c.

And your orators and oratrixes further shew that upon the coming in of the said answer your oratrixes took several exceptions to the same, which exceptions were upon argument allowed by the master to whom the same were referred, and that thereupon your oratrixes obtained an order of this honorable court to amend their said original bill, which was done, and that the said Thomas P. Devereux put in his amended answer thereto; and that thereupon your oratrixes filed their replication to such answer. And, &c.

And that afterwards, to wit, at November term, 1860, of this honorable court, the said suit was set for hearing at the next term thereof, and that said next term, because of the recent rebellion, was not held at June term, 1861, as regularly it should have been, nor for several years thereafter.

268 And your orators and oratrixes further shew that before any other proceedings were had in the said suit, your oratrixes intermarried, to wit, your oratrix Elizabeth on or about the 9th day of May, 1866, with your orator Grinfill Blake, and your oratrix Georgina P., on or about the 12th day of June, 1861, with your orator John Townsend, whereby the said suit and proceedings became abated.

And your orators and oratrixes are advised that they are entitled to have the same revived, and to be put in the same plight and condition as the same were in at the time of the abatement thereof.

To the end, therefore, that the said suit and proceedings which so became abated as aforesaid may stand revived and be in the same plight and condition as the same were in at the time of such abatement, or that the said defendants may shew good cause to the contrary, may it please your honors to grant unto your orators and oratrixes the most gracious writ of subpœna to revive issuing out of and under the seal of this honorable court, to be directed to the said Thomas P. Devereux,

thereby commanding him, at a certain day and under a certain pain to be therein limited, personally to appear before your honors in this honorable court, and then and there to shew cause, if he can, why
269 the said suit and proceedings therein had should not stand, and be revived against him, and be in the same plight and condition as the same were at the time of the abatement thereof, and further to stand to and abide such order and decree in the premises as to your honors shall seem meet.

And your orators and oratrixes shall ever pray, &c.

HAYWOOD, PHILLIPS AND BATTLE,
Sol'rs.

Subpœna.

UNITED STATES OF AMERICA,
District of North Carolina, ss:

The United States of America to Thomas P. Devereux:

We command you that you appear before our judges of our circuit court of the United States of America for the district of North Carolina, at the office of the clerk of the said court, in the city of Raleigh, in said district, on the first Monday in the month of June next, to answer the bill of revivor of Grinfill Blake, a citizen of the State of New York, and Elizabeth J. Devereux Blake, his wife, late Elizabeth J. Devereux Umsted, and John Townsend, a citizen of the State of Connecticut, and Georgina P. Townsend, his wife, late Georgina P. Devereux, this day filed in the clerk's office of said court, in said city of Raleigh, then and there to show cause, if any you have, why the cause
270 referred to in the pleadings should not be revived, and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of North Carolina, to execute.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Raleigh, in said district, the last Monday in November, 1866, and in the ninety-first year of the Independence of the United States.

Issued the 13th day of May, 1867.

[SEAL.] N. J. RIDDICK, *Clerk.*

Memorandum on subpœna.

The within-named defendant is notified that unless he enters his appearance in the clerk's office of said circuit court, at Raleigh aforesaid, on or before the day to which the within writ is returnable, the complaint will be taken against him as confessed, and a decree entered accordingly.

N. J. RIDDICK, *Clerk.*

Proceedings at June term, A. D. 1867.

And afterwards, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, presiding, and the Hon. George W. Brooks, district judge, associate judges, sitting in equity, on the first Monday in
271 June, in the year of our Lord one thousand eight hundred and

the court here, and the appointment of W. J. Hawkins and George W. Mordecai as his assignees in bankruptcy; and thereupon, because the court here are not yet advised what decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the last Monday in November, A. D. 1868.

Proceedings at November term, 1868.

At which last-mentioned day, to wit, at a term of the circuit court of the United States States, for the district of North Carolina, begun and held at the United States court room in the city of Raleigh, in the district aforesaid, before the Hon. George W. Brooks, district judge, presiding, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and sixty-eight, and of our In-
276 dependence the ninety-third year, the same being the thirtieth day of said month, come the parties aforesaid, by their attorneys aforesaid.

W. J. Hawkins & Geo. W. Mordecai, assignees in bankruptcy of T. P. Devereux, made parties def'd't, and cause continued.

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,
against
THOMAS P. DEVEREUX, DEFENDANT.

William J. Hawkins and George W. Mordecai, assignees in bankruptcy of the defendant T. P. Devereux, by leave of the court of bankruptcy, come into court and by consent of all the parties make themselves defendants in this cause.

B. F. MOORE,
Attorney for Assignees.

And thereupon, because the court here are not yet advised what decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the first Monday in June, A. D. 1869.

Proceedings at June term, A. D. 1869.

At which last-mentioned day, to wit, at a term of the circuit court of the United States, for the district of North Carolina, begun and held at the United States court room in the city of Raleigh, in the district aforesaid, before the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, presiding, and the Honorable
277 George W. Brooks, district judge, associate judges, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-third year, the same being the seventh day of said month, come the plaintiffs, Grinfill Blake and Elizabeth J. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, by their attorneys aforesaid, and the defendants W. J. Hawkins and George W. Mordecai, assignees in bankruptcy of the defendant T. P. Devereau, by their attorney aforesaid, also come.

Death of T. P. Devereux suggested.

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. Blake his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,
against
W. J. HAWKINS AND GEORGE W. MORDECAI, assignees in bankruptcy of the defendant T. P. Devereux and Thomas P. Devereux, defendants.

The death of Thomas P. Devereux is suggested to the court here, and also the appointment, since said decease, of Richard C. Badger, as administrator de bonis non, cum testamento annexo of Frances Devereux, deceased.

278 *Filing of bill of revivor.*

And thereupon the said complainants, by their attorneys aforesaid, file in court here their bill of revivor against the said Richard C. Badger, administrator, &c., in the words and figures following, to wit:

Bill of revivor.

In the circuit court of the United States for the fourth circuit and district of North Carolina, in equity, June 5th, 1869.

UNITED STATES OF AMERICA,
District of North Carolina:

To the honorable the judges of the circuit court of the United States within and for the district of North Carolina:

Grinfill Blake and Elizabeth J. Devereux Blake, his wife, of New York, and citizens of the State of New York, and John Townsend and Georgiana P. Townsend, his wife, of Stratford, and citizens of the State of Connecticut, bring this their bill of revivor against Richard C. Badger, administrator de bonis non, cum testamento annexo of Frances Devereux, deceased, which said Richard is of Raleigh, and a citizen of the State of North Carolina. And thereupon your orators and oratrixes complain and say, that on or about the 26th day of March, A. D. 1859, your oratrixes, of whom the first above named was then Elizabeth J. Devereux Umsted, and the other Georgina P. Devereux, by their said names, and together with Frank G. Q. Umsted, the then husband of the said Elizabeth, exhibited their original bill of com-
279 plaint in this honorable court, against Thomas P. Devereux, then a citizen of the State of North Carolina, as the sole surviving executor of Frances Devereux, deceased, and Leonidas Polk, then a citizen of the State of Louisiana, and Frances Ann Polk, his wife, as defendants thereto, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying an account of the execution of the will and the administration of the assets of the said Frances Devereux, &c.

That the said defendant, Thomas P. Devereux, being duly served with process of subpœna, appeared, and the said Leonidas Polk and

the court here, and the appointment of W. J. Hawkins and George W. Mordecai as his assignees in bankruptcy; and thereupon, because the court here are not yet advised what decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the last Monday in November, A. D. 1868.

Proceedings at November term, 1868.

At which last-mentioned day, to wit, at a term of the circuit court of the United States States, for the district of North Carolina, begun and held at the United States court room in the city of Raleigh, in the district aforesaid, before the Hon. George W. Brooks, district judge, presiding, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and sixty-eight, and of our In-
276 dependence the ninety-third year, the same being the thirtieth day of said month, come the parties aforesaid, by their attorneys aforesaid.

W. J. Hawkins & Geo. W. Mordecai, assignees in bankruptcy of T. P. Devereux, made parties def'd't, and cause continued.

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,
against
THOMAS P. DEVEREUX, DEFENDANT.

William J. Hawkins and George W. Mordecai, assignees in bankruptcy of the defendant T. P. Devereux, by leave of the court of bankruptcy, come into court and by consent of all the parties make themselves defendants in this cause.

B. F. MOORE,
Attorney for Assignees.

And thereupon, because the court here are not yet advised what decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the first Monday in June, A. D. 1869.

Proceedings at June term, A. D. 1869.

At which last-mentioned day, to wit, at a term of the circuit court of the United States, for the district of North Carolina, begun and held at the United States court room in the city of Raleigh, in the district aforesaid, before the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, presiding, and the Honorable
277 George W. Brooks, district judge, associate judges, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-third year, the same being the seventh day of said month, come the plaintiffs, Grinfill Blake and Elizabeth J. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, by their attorneys aforesaid, and the defendants W. J. Hawkins and George W. Mordecai, assignees in bankruptcy of the defendant T. P. Devereau, by their attorney aforesaid, also come.

Death of T. P. Devereux suggested.

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. Blake his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,
against
W. J. HAWKINS AND GEORGE W. MORDECAI, assignees in bankruptcy of the defendant T. P. Devereux and Thomas P. Devereux, defendants.

The death of Thomas P. Devereux is suggested to the court here, and also the appointment, since said decease, of Richard C. Badger, as administrator de bonis non, cum testamento annexo of Frances Devereux, deceased.

278 *Filing of bill of revivor.*

And thereupon the said complainants, by their attorneys aforesaid, file in court here their bill of revivor against the said Richard C. Badger, administrator, &c., in the words and figures following, to wit:

Bill of revivor.

In the circuit court of the United States for the fourth circuit and district of North Carolina, in equity, June 5th, 1869.

UNITED STATES OF AMERICA,
District of North Carolina:

To the honorable the judges of the circuit court of the United States within and for the district of North Carolina:

Grinfill Blake and Elizabeth J. Devereux Blake, his wife, of New York, and citizens of the State of New York, and John Townsend and Georgiana P. Townsend, his wife, of Stratford, and citizens of the State of Connecticut, bring this their bill of revivor against Richard C. Badger, administrator de bonis non, cum testamento annexo of Frances Devereux, deceased, which said Richard is of Raleigh, and a citizen of the State of North Carolina. And thereupon your orators and oratrixes complain and say, that on or about the 26th day of March, A. D. 1859, your oratrixes, of whom the first above named was then Elizabeth J. Devereux Umsted, and the other Georgina P. Devereux, by their said names, and together with Frank G. Q. Umsted, the then husband of the said Elizabeth, exhibited their original bill of complaint in this honorable court, against Thomas P. Devereux,
279 then a citizen of the State of North Carolina, as the sole surviving executor of Frances Devereux, deceased, and Leonidas Polk, then a citizen of the State of Louisiana, and Frances Ann Polk, his wife, as defendants thereto, thereby stating such several matters and things as are therein for that purpose more particularly mentioned and set forth, and praying an account of the execution of the will and the administration of the assets of the said Frances Devereux, &c.

That the said defendant, Thomas P. Devereux, being duly served with process of subpœna, appeared, and the said Leonidas Polk and

wife Frances, being absent, beyond the jurisdiction of this court, were not served with process, whereupon the cause proceeded against the said Thomas P. Devereux alone, and at June term, 1859, of this court it appearing the said Frank G. Q. Umsted having previously died, such death was suggested, and the cause proceeded in the names of the said Elizabeth and the said Georgina alone; and at the same term the said Thomas P. put in a demurrer to the said bill, which at the same term was set for hearing by consent, and also argued and overruled without costs, and the said defendant Thomas P. ordered to answer; and afterwards the said defendant Thomas P. Devereux put in his answer to the said original bill, as in and by, &c.

280 That upon the coming in of the said answer, your oratrixes took several exceptions to the same, which exceptions were, upon argument, allowed by the master to whom the same were referred; and thereupon your oratrixes obtained an order of this honorable court to amend their said original bill, which was done, and the said Thomas P. Devereux put in his amended answer thereto; and thereupon your oratrixes filed their replication to such answer, and testimony in said cause was taken by the said Thomas P. Devereux.

That afterwards, to wit, at November term, 1860, of this honorable court, the said cause was set for hearing at the next term thereof, and said next term, because of the late civil war, was not held in June, 1861, as regularly it should have been, nor for several years thereafter; and before any other proceedings were had in the said cause, your oratrixes intermarried, to wit, your oratrix Elizabeth, on or about the 9th day of May, 1866, with your orator Grinfill Blake, and your oratrix Georgina P., on or about the 12th day of June, 1861, with your orator John Townsend, whereby the said cause and proceedings became abated.

That on or about the 13th day of May, 1867, your orators and oratrixes exhibited their bill of revivor in this honorable court against the said Thomas P. Devereux to have the said cause and proceedings which so abated as aforesaid revived, and at June term,

281 1867, of this honorable court the said Thomas P. Devereux, having been duly served with process of subpœna, appeared and put in his answer to said bill of revivor, whereupon it was ordered and adjudged by this honorable court then and there that the said cause should stand revived and be in the same plight and condition as the same was in at the time of its abatement.

That at June term, 1868, of this honorable court, it appearing that the said Thomas P. Devereux had previously been duly adjudicated a bankrupt, such bankruptcy was suggested, and at a rule day of this honorable court, held in February, 1869, W. G. Hawkins and G. W. Mordecai, assignees in bankruptcy of the said defendant, Thomas P. Devereux, by leave of the court of bankruptcy, came into this court, and by consent of all the parties made themselves parties defendant in this cause.

That afterwards, to wit, on or about the day of , 1869, the said defendant, Thomas P. Devereux, departed this life, by which said decease this cause became abated as to the personal representative of Frances Devereux, deceased.

And afterwards, to wit, on or about the 2nd day of June, 1869, Richard C. Badger, the defendant in this bill of revivor, was by the court of probate of Wake County duly and lawfully appointed and qualified ad-

282 ministrator de bonis non cum testamento annexo of Frances Devereux, deceased, and your orators and oratrixes are advised that they are entitled to have this cause revived against the said

Richard C. Badger, administrator as aforesaid, and put in the same plight and condition, with respect to him as administrator as aforesaid, as the same was in as to Thomas P. Devereux, deceased, as executor as aforesaid at the time of the abatement thereof last aforesaid.

To the end, therefore, that the said cause and proceedings which so became abated as last aforesaid may stand revived and be in the same plight and condition in which the same were at the time of such abatement, or that the said defendant Richard C. Badger may show good cause to the contrary,

May it please your honor to grant unto your orators and oratrixes the most gracious writ of subpœna to revive, issuing out of and under the seal of this honorable court, to be directed to the said Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, thereby commanding him that on a certain day, and under a certain pain, to be therein limited, personally to be and appear before your honors in this honorable court and then and there to show cause, if he can, why the said cause and proceedings therein had should not stand and be revived against him, as administrator as aforesaid, and be in the same plight and condition in respect
283 to him, as administrator as aforesaid, as the same were as to Thomas P. Devereux, deceased, as executor as aforesaid, at the time of the abatement thereof; and, further, to stand to and abide such order and decree in the premises as to your honors shall seem meet.

And your orator and oratrixes shall ever pray, &c.

FOWLE AND BADGER,
PHILLIPS AND BATTLE,
HAYWOOD,
Solicitors.

Service admitted by R. C. Badger, adm'r, &c.

And thereupon the said Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, comes into court here and admits, in writing, service of the foregoing bill, and consents to the revivor therein prayed, which admission and consent are in the words and figures following, to wit:

I do hereby accept service of the within bill, and consent to the revivor therein prayed, June 5th, 1869.

R. C. BADGER,
Administrator de bonis non cum testamento annexo of Frances Devereux.

Cause revived against R. C. Badger, adm'r, &c.

And thereupon the said Richard C. Badger, administrator, &c., is, with the consent of all the parties, made a party defendant herein,
284 and it is ordered that this cause be, and it hereby is, revived as to him as administrator as aforesaid, and that it stand for hearing under the former order.

Hearing of decretal order directing account.

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE, his wife, and John Townsend and Geogina P. Townsend, his wife, complainants,
against
W. J. HAWKINS AND GEORGE W. MORDECAI, assignees in bankruptcy of Thomas P. Devereux, a bankrupt, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, defendants.

This cause coming on to be heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: that it be referred to N. J. Riddick, as commissioner, to inquire and take an account of the assets of Frances Devereux, deceased, which came into the hands or under the control of Thomas P. Devereux, deceased, during his life-time, and of what disposition was made by the said Thomas P. of the assets aforesaid, and of what portion thereof remained in his hands unadministered; and
285 also of what portion thereof, if any, was wasted or misapplied by the said Thomas P.

That the said commissioner further inquire and report what portion of the charge of fifty thousand dollars created by the deed of the 3rd of July, 1839, executed by John Devereux and the said Frances Devereux to the said Thomas P. Devereux remained unappointed by the said Frances at the date of her decease, and that he take an account of the manner in which the said fifty thousand dollars, or any part thereof, was appointed by the said Frances during her life-time, and also an account of what disposition was made by the said Thomas P. after the decease of the said Frances of the residue of the said charge of fifty thousand dollars remaining unappointed at the date of her decease.

That the said commissioner further inquire and report what portion of the charge of three thousand dollars per year, during the life of the said Frances, created by the deed of the 3rd of July, 1839, aforesaid, remained unpaid by the said Thomas P. at the date of the decease of the said Frances, and that he take an account of the manner in which the said annual charge of three thousand dollars, and every part thereof, was paid by the said Thomas P., to or for the said Frances dur-
286 ing her life-time, and also an account of what disposition was made by the said Thomas P., after the decease of the said Frances, of the residue of the said annual charge of three thousand dollars remaining unpaid at the date of her decease.

And in taking the accounts aforesaid, the said commissioner, after charging the said Thomas P. Devereux with the residue of said fund of fifty thousand dollars, remaining unappointed at the decease of the said Frances, and also with the residue of the said annuity of three thousand dollars, remaining unpaid at the decease of the said Frances, shall credit the said Thomas P., in respect of said residues, with all payments made by him towards the satisfaction of all the pecuniary legacies bequeathed in the last will and testament of the said Frances Devereux.

And all other disbursements made by the said Thomas P., in respect of the estate of the said Frances, shall, in taking said accounts, be charged against the general assets of the said Frances Devereux, deceased, which come into the hands of the said Thomas P. Devereux.

And all the questions involved in this cause are reserved for consideration, until the coming in of the said accounts and report of the commissioners aforesaid.

287 *Proceedings at the November term, A. D.* 1869.

And afterwards, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. George W. Brooks, district judge, presiding, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-fourth year, the same being the twenty-ninth day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person, and because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here, on the first Monday of June, A. D. 1870.

Proceedings at June term, A. D. 1870.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. George W. Brooks, district judge, presiding, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy, and of our Independ-
288 ence the ninety-fourth year, the same being the sixth day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person, and because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here, on the last Monday of November, A. D. 1870.

Proceedings at November term, A. D. 1870.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit-court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and seventy, and of our Independence the ninety-fifth year, the same being the twenty-eighth day of said month, came the parties aforesaid, by their atto'neys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person.

Appointment of E. F. Page com'r in the place of N. J. Riddick, & cause cont'd.

Whereupon the following proceedings are had in the cause of—

289 GINFILL BLAKE AND ELIZABETH J. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,
against
W. J. HAWKINS AND GEORGE W. MORDECAI, assignees in bankruptcy of Thomas P. Devereux, a bankrupt, and Richard C. Badger, administrator de bonis non cum testamento annexo, of Frances Devereux, deceased, defendants.

In this cause, on motion of E. Graham Haywood, of counsel for complainants, and with the consent of the defendants, signified by their counsel in open court, it is ordered and decreed that the decretal order made in this cause, at June term, A. D. 1869, be altered and amended by striking out the name of N. J. Riddick as commissioner in said decretal order wherever the same occurs, and substituting therefor the name of Erasmus F. Page, esqr., counsellor at law, as commissioner to take the accounts and make the report ordered and directed in the said decretal order of June term, 1869, and the said E. F. Page is hereby vested with all the authority and powers conferred on N. J. Riddick in the decretal order aforesaid; and he is hereby required in all respects to conform to the directions contained in said decretal order, to
290 take the accounts therein directed, and to report thereon, and what he may have done in the premises, to the next term of this court, and this cause is retained for further orders.

And thereupon, because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the first Monday of June, A. D. 1871.

Proceedings at June term, A. D. 1871.

At which last mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit-court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-fifth year, the same being the fifth day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person, and the defendant, George W. Mordecai.

Death of G. W. Mordecai suggested.—By consent, Walter Clark made party def'd't in his stead, & cause cont'd.

Whereupon the following proceedings are had in the cause of—

291 GINFILL BLAKE AND ELIZABETH J. D. Blake, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,

against

W. J. HAWKINS AND GEORGE W. MORDECAI, assignees in bankruptcy of Thomas P. Devereux, a bankrupt, and Richard C. Badger, administrator de bonis non, cum testamento annexo, of Frances Devereux, deceased, defendants.

The death of George W. Mordecai, one of the assignees in bankruptcy of Thomas P. Devereux, deceased, is suggested, and the appointment of Walter Clark, of Halifax County, by the court of bankruptcy in his stead, as such assignee, is also suggested to the court; and thereupon the said Walter Clark, joint assignee in bankruptcy of Thomas P. Devereux, with W. J. Hawkins, comes into court, by leave of the court of bankruptcy, and applies to be made a party-defendant in this cause, and with the consent of all the parties plaintiff and defendant, he is made such party-defendant accordingly.

BRAGG & MOORE & GATLING,
For Defendants.

HAYWOOD,
Att'y for Plaintiffs.

And thereupon, because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here on the last Monday of November, A. D. 1871.

292 *Proceedings at November term, A. D.* 1871.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit-court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and seventy-one, and of our Independence the ninety-sixth year, the same being the twenty-seventh day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person, and because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here, on the first Monday of June, A. D. 1872.

Proceedings at June term, A. D. 1872.

At which last-mentioned day, to wit, at a term of the circuit court of he United States for the district of North Carolina, begun and held at

the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit-court judge, presiding, and the Hon. George W. Brooks, district judge, associate
293 judges, sitting in equity, on the first Monday in June, in the year of our Lord one thousand, eight hundred and seventy-two, and of our Independence the ninety-sixth year, the same being the third day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person, and because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid, before the court here, on the last Monday of November, A. D. 1872.

Proceedings at Novemler term A. D. 1872.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the eastern district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit-court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh year, the same being the twenty-fifth day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person, and because the court here are are not yet advised what
294 further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here, on the first Monday of June, A. D. 1873.

Proceedings at June term, A. D. 1873.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the eastern district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit-court judge, presiding, and the Hon. George W. Brooks, district judge, associate judges, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-seventh year, the same being the second day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person, and becaus' the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid before the court here, on the last Monday of November, A. D. 1873.

Proceedings at November term, A. D. 1873.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the eastern district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Hugh L. Bond, circuit-court judge, presiding, and the Hon. George W. Brooks, district judge, associate
295 judges, sitting in equity, on the last Monday in November, in the year of our Lord one thousand eight hundred and seventy-three,

and of our Independence the ninety-eighth year, the same being the twenty-fourth day of said month, came the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person.

Report of M'r Commissioner Page.

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE, his wife, and John Townsend and Georgina P. Townsend, his wife, complainants,
against
W. J. HAWKINS AND WALTER CLARK, assignees in bankruptcy of Thomas P. Devereux, a bankrupt, and Richard P. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, defendants.

M'r Commissioner Page comes into court and files his report, and all the evidence and exhibits accompanying the same, in the words and figures following, to wit:

Report.

RALEIGH, *December 5th*, 1873.

To the honorable judges of said court:

296 Under a decretal order, made at June term, 1869, which order is filed with the court papers in this cause, marked "Decretal order, June term, 1869," which above order was amended at November term, 1870, by "an order appointing new commissioner," November term, 1870 (which order is marked as referred to), the commissioner proceeded, at his office, in the city of Raleigh, at various dates between the 20th day of October, 1873, and the 5th day of December, of the same year, to take evidence, hear the arguments of counsel, and state the accounts ordered in said decretal orders, herein referred to, and, in the opinion of Chief Justice Chase, made at said term, which latter is filed with the court papers in the case, marked "M M," all parties to said suit were present, either in person or by counsel.

The commissioner finds—

I. That there is due the estate of M'r's Frances Devereux, by Thomas P. Devereux, as a charge on all the lands of said Thomas P. Devereux, as per deed of settlement of July 3rd, 1839 (filed as part of original bill, and marked therein "A"), and as per accounts A B, and balance-sheet of said accounts, marked "Account E," the sum of ninety-two thousand four hundred and thirty-eight and $\frac{72}{100}$ dollars ($92,438.72).

297 II. That there is due by the said Thomas P. Devereux to the estate of M'r's Frances Devereux, on account of the administration account of said estate, as per accounts D and F, and balance-sheet of said accounts, marked "Account G," the additional sum of forty-one thousand six hundred and thirty-three dollars ($41,633.00).

The evidence taken by the commissioner during the progress of the cause is filed with this report, and marked "Depositions of W. D. Cooke," "Depositions of John Devereux, Nos. 1 and 2," and "Depositions of

John N. Bunting," and are paged, so that a correct reference can be had to each and every statement therein contained.

The exhibits filed in the cause are collected together in two paper wrappers, the first of which is marked "Exhibits filed prior to appointment of commissioner;" the second, "Exhibits filed before commissioner." Both are enclosed in a paper wrapper marked "Exhibits filed in the cause."

The findings of law and fact by the commissioner in this cause, and the reasons influencing him in each and every instance, are herewith given at the request of counsel, in order that they may the more readily file their exceptions to certain rulings herein made by said commissioner.

I. The defendants contended that the $3,000 annuity, as per deed of settlement of July 3rd, 1839, was to be considered merely as in-
298 terest on the $50,000 fund charged by said deed, and that the proper mode of stating this account on the credit side of M'r's Frances Devereux, on account of the above-named charges, would be to start the account on the 1st March, 1840, with the charge of $50,000, and $3,000 as interest thereon, said principal & interest being diminished in each and every year by the expenditures of Thomas P. Devereux on account of M'r's Frances Devereux, until the date of the death of M'r's Frances Devereux, on the 3rd June, 1849.

The commissioner, after carefully considering the first and third items in the deed of settlement of July 3rd, 1839, marked "A," and appended to the original bill as a part thereof, decided that such was not the true construction and meaning of said first and third items, and ruled and so stated the account, that the above items were separate and distinct charges upon the lands of Thomas P. Devereux—the annuity to be considered as intended for the annual expenses of M'r's Frances Devereux, and the fund of $50,000 to be appointed at her own discretion—a final appointment of which sum was made by her, in the opinion of the commissioner, in the established will of M'r's F. Devereux, which will is filed as part of the original bill, and marked "B." The plaintiffs also excepted to the commissioner's mode of stating the
299 account, for the reasons contained in the first exception filed by them.

II. The defendants then submitted to the commissioner a paper-writing, admitted by both plaintiffs and defendants to have been signed by M'r's F. Devereux, purporting to be a deed of explanation from said Frances Devereux, "to all whom it may concern," and acknowledging the true construction and intention of the deed of settlement of July 3rd, 1839, to be in accordance with the first proposition herein stated, as contended for by the defendants. The said paper-writing is herewith filed and marked "Exhibit X." The commissioner ruled—

1st. That said paper being made to no person, being very indefinite and being obtained by a trustee from his cestui que trust, could not be considered by the commissioner, in stating this account, as barring M'r's Frances Devereux, or her legal representatives, from the advantage of a legal decision as to the construction of the deed of settlement of July 3rd, 1839.

2nd. That the decretal order of June term, 1869, heretofore referred to, and the opinion of the late Chief Justice Chase required the commissioner to take an account from the beginning of the trusteeship of Thomas P. Devereux.

III. The counsel for defendants then offered, as sufficient evidence of

an account stated and settled between M'r's Frances Devereux
300 and Thomas P. Devereux, up to the 21st June, 1846, a paper-writing signed by M'r's Frances Devereux, the body of which paper-writing is admitted to be in the handwriting of Thomas P. Devereux, purporting to be a statement made by M'r's Frances Devereux that S. W. Whiting had gone over the accounts between herself and son, Thomas P. Devereux, and found them correct, &c., as per the said paper-writing, which is herewith filed among the exhibits in the cause, and marked "Exhibit E E."

On this point the commissioner ruled that the relationship of trustee and cestui qui trust, being in existnece between said Frances Devereux and Thomas P. Devereux, and S. W. Whiting being merely the agent of Thomas P. Devereux, and there being no evidence offered before the commissioner of M'r's Devereux's knowing fully the contents and meaning of said paper offered for her signature by her trustee, or that she was properly advised of the legal effects of the same, or that any evidence was offered to satisfy her of the correctness and fairness of said matters of account therein stated, that therefore he could not receive the said paper-writing as full and sufficient evidence of an account stated and settled between parties up to the 21st June, 1846.

IV. The counsel for defendants then offered an account stated
301 by William D. Cooke, between Thomas P. Devereux and M'r's Frances Devereux, up to June 21st, 1847 (which account is herewith filed as an exhibit, marked "B B"), as full and sufficient evidence to show that the account ordered to be stated by this commissioner should begin at that date, and that said paper-writing, with its balance found, should constitute the basis of his account, to be stated in this cause.

The commissioner ruled that upon the evidence of William D. Cooke (which is herewith filed, marked "Depositions of William D. Cooke"), page 1st of which evidence relates to the above account stated, that he, the commissioner, was not satisfied that the said paper-writing, marked "B B," was a full, correct, and fair account to be taken by him as a starting-point for his account, beyond which point he could not go.

V. The defendants then offered a copy of a certain paper-writing, purporting to be signed by Thomas P. Devereux and Frances Devereux, as an agreement and settlement of certain matters in dispute between them.

The evidence of W. D. Cooke, in his depositions heretofore alluded to, concerning the mode in which said agreement was made, and the
302 opinion of the commissioner heretofore fully formed from the evidence and the law before him, that Thomas P. Devereux was the trustee of M'r's Frances Devereux until the date of her death, determined the commissioner to disregard the copy of said paper-writing, a copy of which is herewith filed as an exhibit and marked "D D."

A power of attorney is also filed as an exhibit, marked "C C," from M'r's Frances Devereux to William D. Cooke, a perusal of which the commissioner most respectfully submits might be of use to the court.

VI. The defendants then submitted, as full evidence of items of charge and discharge between said Frances Devereux and her son, Thomas P. Devereux, a certain book containing certain entries, marked "Ledger," which was proven by John Devereux in his "Depositions No. 1," pages 1, 2, and 3, to have been kept by himself as agent for his father, all of which will more fully appear by reference to said depositions.

The counsel on both sides considering this a most important point in the course of this suit, requested commissioner to give his opinion in writing, which the commissioner did, and the same is herewith filed as

a part of this report, marked "Opinion of referee, No. 1," in which all the points of law and fact raised by plaintiffs and defendants are, to the best of the knowledge of this commissioner, fully set forth.

303 The commissioner ruled out the said book as "satisfactory evidence of matters of charge and discharge" claimed by the defendants' counsel as therein contained, but allowed the witness for defendants, John Devereux, to refresh his memory in regard to all the items therein contained from said book, and in case of each and every item which the commissioner deemed satisfactor'y proven he allowed the same.

Upon the rulings heretofore mentioned and upon the evidence, and (as the commissioner thinks) the law and equity of this case, he proceeded to take the accounts ordered in this case, as follows, viz:

First. Account A contains all the charges to be made against Thomas P. Devereux on account of the $3,000 annuity, as per deed of settlement of July 3rd, 1839, and as per account submitted by defendants, marked "L L," together with the vouchers to sustain said account, with interest calculated on each item to the date of the death of M'r's Frances Devereux, on the 3rd day of June, 1849.

Second. Account B contains all items of charge made by Thomas P. Devereux against M'r's Frances Devereux, which are either proven to the satisfaction of the commissioner or admitted by counsel for plaintiffs; a reference is made in said accounts to the sources of information upon which said account is based; all items of charge allowed

304 since the 21st day of June, 1846, being proven by account and vouchers, which are herewith filed, marked "L L."

1. Under this account there were claimed by defendants two items of charge, as follows:

"To amount due by you to executors of John Devereux, deceased, $1,772.65."

"To your ½ of stock, valued by George W. Mordecai, $1,684.

Evidence regarding these items was taken by defendants, which evidence is contained in the "Depositions of John Devereux, No. 2," pages 21 and 22, and in the "Depositions of John N. Bunting," and in a paper-writing filed as an exhibit, marked "F F."; but the commissioner, deeming said evidence insufficient to establish these claims, declined to allow the said charges.

2. There was also claimed by defendants charges, at various dates and of various amounts, paid to M'r's C. E. Fuller by Thomas P. Devereux, on account of his mother. The evidence on these charges will be found on page 23 of John Devereux's deposition No. 2, and in vouchers filled with account L L. The commissioner deeming the evidence on these points and charges sufficient, allowed the same, to which allowance the plaintiffs excepted.

3. The defendants claimed certain amounts at various dates as

305 annuities paid by Thomas P. Devereux on his mother's account to Miss Ogden. The evidence thereon will be found on pages 22 and 23 of the "Depositions of John Devereux, No. 2," and in a certain paper writing heretofore filed, marked "D D." The commissioner disallowed said charges.

Third. Account C contains an account of the pecuniary legacies left by the will of M'r's F. Devereux, with interest calculated on each and every payment of said legacies by Thomas P. Devereux from date of payment of the same to date of the bankruptcy of said T. P. Devereux, May 30th, 1868.

Fourth. Account E is a balance-sheet of the above accounts, showing

the balance due at the death of M'r's F. Devereux by Thomas P. Devereux, as a charge on all his lands, on account of the $50,000 fund, the $3,000 annuity, and interest calculated on said balance to the date of the bankruptcy of Thomas P. Devereux, May 30th, 1868, the amount of pecuniary legacies under the will of M'r's Frances Devereux being deducted therefrom, as ordered by decretal order of June term, 1869, and ascertained by account C.

Fifth. Account D is an account of the general administration of M'r's Frances Devereux's estate after her death, exclusive of the charge on lands heretofore ascertained by Thomas P. Devereux, or his
306 agent, S. W. Whiting; that is, of the credit side of the estate, viz, the amount received by said T. P. Devereux, or his agent, Whiting, on account of said estate, as per account and vouchers filed by defendants, and marked "H. H."

Sixth. Account F is the debit side of the estate of M'r's Frances Devereux, on account of the administration of the same by Thomas P. Devereux and S. W. Whiting, as per account and vouchers marked "H. H."

Seventh. Account G is the balance-sheet of said accounts D and F.

To various of the above rulings, and of the statements of account made by your commissioner, both plaintiffs and defendants excepted, in the presence of commissioner and at the time when said exceptions arose. The exceptions of plaintiffs are herewith filed by the said plaintiffs, and said exceptions are numbered, and clearly set forth the portions of the report to which the plaintiffs except, and the reasons therefor, and are marked "Exceptions of plaintiffs to report of commissioner." The exceptions of defendants are also filed in like manner, and are marked "Exceptions of defendants to report of commissioner."

All of which is most respectfully submitted to the honorable court.

ERASMUS F. PAGE,
Commissioner.

307 *Account A, with report of commissioner.*

Receipts of Thomas P. Devereux on account of $3,000 annuity.

THOMAS P. DEVEREUX, ESQ'R., IN ACC'T WITH M'R'S FRANCES DEVEREUX.

1840.			
Mar. 1st.	To amount of annuity charged on the lands of T. P. Devereux, as per deed of settlement of July 3rd, 1839, appended to the "original bill" in this suit, and marked "A"		$3,000
	" interest on the above amount to 3rd June, 1849, date of the death of M'r's Frances Devereux, as follows, viz		
	9 years,	$1,620	
	3 months,	45	
	3 days,	1 50	1,666 50
1841.			
Mar. 1st.	" amount of annuity, as above charged		3,000
	" interest on same to 3rd June, 1849, as follows:		
	8 years,	$1,440	
	3 months,	45	
	3 days,	1 50	1,486 50
1842.			
Mar. 1.	" amount of annuity, as above charged		3,000
	" interest on same to 3rd June, 1849, as follows:		
	7 years,	$1,260	
	3 months,	45	
	3 days,	1 50	1,306 50

Account A—Continued.

1843. Mar. 1.	To amount of annuity as above charged	3,000	
	" interest on same to 3rd June, 1849, as follows:		
	6 years, $1,080		
	3 months, 45		
	3 days, 1 50	1,126 50	
" "	" amount carried forward		$17,586 00
308			
1844. Mar. 1.	To amount brought forward		$17,586 00
" "	" " of annuity as heretofore charged	$3,000	
	" interest on same to 3rd June, 1849, as follows;		
	5 years, $900		
	3 months. 45		
	3 days, 1 50	946 50	
1845. Mar. 1.	" amount of annuity as heretofore charged	3,000	
	" interest on same to 3rd June, 1849, as follows:		
	4 years, $720		
	3 months, 45		
	3 days, 1 50	766 50	
1846. Mar. 1.	" amount of annuities as heretofore charged	3,000	
	" interest on same to 3rd June, 1849, as follows;		
	3 years, $540		
	3 months, 45		
	3 days, 1 50	586 50	
June 21.	" amount received by T. P. D., from John Devereux, on account of proceeds of crop of 1845	2,256 74	
	" interest on same to 3rd June, 1849, as follows:		
	3 years, $408 06		
	11 months, 124 69		
	13 days, 4 92	537 67	
" "	" amount received for crop 1846	120 95	
" "	" interest on same to 3rd June, 1849, as follows:		
	3 years, $21 60		
	11 months, 6 60		
	13 days, 26	28 46	14,243 32
" "	" amount carried forward		$31,829 32
309			
1846. June 21.	To amount brought forward		$31,829 32
" "	" " due M'r's Devereux on account of the estate of J. Devereux	$91 75	
	" interest to 3rd June, 1849, as follows:		
	3 years, $16 56		
	11 months, 5 06		
	13 days, 20	21 82	
1847. Mar. 1.	" amount of annuity due this day, as heretofore charged	3,000	
	" interest on same to 3rd June, 1849, as follows:		
	2 years, $360		
	3 months, 45		
	3 days, 1 50	406 50	

Account A—Continued.

1848. Mar. 1.	" amount of annuity due this day, as heretofore charged	3,000	
	" interest on same to 3rd June, 1849, as follows: 1 year, $180; 3 months, 45; 3 days, 1 50	226 50	
1849. Mar. 1.	" amount of annuity due this day, as heretofore charged	3,000	
	" interest on same to 3rd June, 1849, as follows: 3 months, $45; 3 days, 1 50	46 50	9,793 07
June 3.	" Total balance due by T. P. Devereux to M'r's Frances Devereux, on account of annuity, interest thereon, and certain other accounts, as herein specified, which amount of balance is carried forward to general balance-sheet, marked "E"		$41,622 39

310

Account B, with report of commissioner.

Expenditures of T. P. Devereux out of $3,000 annuity.

M'r's Frances Devereux in account with Thomas P. Devereux.

1839. July 19	To amount of receipts given to T. P. Devereux, as per page turned down of account-book of T. P. D., marked "50," and filed with papers....	$1,075 00	
	" interest on same to 3rd June, 1849—date of M'r's D's death	636 88	
Nov. 29	" cash expended by T. P. D. for M'r's F. D., as per list this day furnished her	308 65	
" "	" interest, as on last entry	177 86	
1841. April 15	" cash paid for Booker, on account of M'r's F. Devereux	1,000 00	
	" interest to 3rd June, 1849	483 00	
May 15	" cash paid M'r's D., per John	150 00	
	" interest to 3rd June, 1849	72 41	
1842 April 15	" bond given to M'r's S. E. Devereux by Thomas P. Devereux, by M'r's Frances Devereux's direction	5,000 00	
	" interest to 3rd June, 1849	2,141 15	
1843. July 9	" cash at this date	250 00	
	" interest to 3rd June, 1849	88 52	
Sept'r 11	" cash at this date	45 00	
	" interest to 3rd June, 1849	15 47	
Oct. 17	" cash at this date	25 00	
	" interest as above	8 45	
Nov. 20	" cash	150 00	
	" interest	40 84	
	" amount carried forward		$11,675 23

Account B—Continued.

311					
	1844.				
		To amount brought forward			$11,675 23
Jan.	1	" cash to M'r's Devereux		$100 00	
		" interest		32 55	
"	30	" cash to M'r's Devereux		150 00	
"	"	" interest		48 12	
Mar.	8	" cash " "		500 00	
"	"	" interest		187 50	
	1846.				
June	23	" cash " "		50 00	
"	"	" interest		8 86	
"	24	" cash to M'r's Parmelee		100 00	
"	"	" interest		17 72	
"	30	" cash to M'r's Devereux		285 00	
"	"	" interest		50 02	
July	6	" cash " "		170 00	
"	"	" interest		29 75	
"	10	" cash " "		50 00	
"	"	" interest " "		8 42	
"	13	" M. B. Royster's note of M'r's D's		887 14	
"	"	" interest		152 99	
"	17	" cash to M'r's Devereux		106 00	
"	"	" interest		18 25	
"	25	" cash " "		52 30	
"	"	" interest		8 56	
Aug.	1	" cash " "		15 00	
"	"	" interest		2 56	
"	11	" cash " "		32 00	
"	"	" interest		5 12	
"	24	" cash " "		16 00	
"	"	" interest		2 58	
Sept.	4	" cash " "		10 00	
"	"	" interest		1 70	
					3,088 14
		" amount carried forward			$14,763 37
312					
	1846.				
		To amount brought forward			$14,763 37
Sept.	8	To cash		30 00	
"	"	" interest		5 10	
"	14	" cash		15 00	
"	"	" interest		2 48	
"	22	" cash		50 00	
"	"	" interest		8 06	
"	29	" cash		15 00	
"	"	" interest		2 38	
Oct.	17	" cash		15 00	
"	"	" interest		2 09	
"	29	" William Stronach's note		500 00	
"	"	" interest		76 84	
"	15	" cash paid W. D. Cooke		50 00	
"	"	" interest		8 05	
"	"	" cash		30 00	
"	"	" interest		4 74	
"	19	" William Pierce's note		747 13	
"	"	" interest		72 80	
"	29	" cash to W. D. Cooke		50 00	
"	"	" interest		7 79	
Nov.	17	" cash to W. D. Cooke		50 00	
"	"	" interest		7 54	
"	28	" cash to W. D. Cooke		150 00	
"	"	" interest		22 43	

Account B—Continued.

Dec.	7	To cash to W. D. Cooke	100 00	
"	"	" interest	13 82	
"	18	" cash " " "	50 00	
"	"	" interest	7 37	
"	26	" cash " " "	150 00	
"	"	" interest	21 73	
				2,265 35
		" amount carried forward		$17,028 72
313				
1847.				
		To amount brought forward		$17,028 72
Feb'y	4	" cash to W. D. Cooke	$430 00	
"	"	" interest	50 32	
"	"	" cash " " "	100 00	
"	"	" interest	14 10	
"	19	" cash " " "	150 00	
"	"	" interest	20 82	
Mar.	13	" cash " " "	100 00	
"	"	" interest	13 35	
"	22	" cash " " "	150 00	
"	"	" interest	20 07	
April	12	" cash " " "	275 00	
"	"	" interest	35 37	
"	24	" cash " " "	25 00	
"	"	" interest	3 14	
"	30	" cash " " "	100 00	
"	"	" interest	12 54	
May	21	" cash " " "	100 00	
"	"	" interest	12 13	
"	22	" cash " " "	231 00	
"	"	" interest	28 25	
"	25	" cash " " "	200 00	
"	"	" interest	24 23	
June	7	" cash on W'm Pearce's note	817 85	
"	"	" interest	88 92	
"	8	" cash paid W. D. Cooke	200 00	
"	"	" interest	23 87	
				3,225 96
"	"	" amount carried forward		$20,254 68
314				
1847.				
June	22	To amount brought forward		$20,254 68
"	"	" balance paid W. Pearce	$11 33	
"	"	" interest	1 44	
Sept.	2	" Laurens Hinton's note	522 80	
"	"	" interest	54 87	
July	26	" cash to W. D. Cooke	100 00	
"	"	" interest	12 13	
Aug.	12	" cash " " "	50 00	
"	"	" interest	5 43	
"	17	" cash " " "	75 00	
"	"	" interest	7 71	
"	28	" cash " " "	50 00	
"	"	" interest	5 18	
Sept.	2	" cash " " "	200 00	
"	"	" interest	20 32	
Oct.	5	" cash " " "	75 00	
"	"	" interest	7 50	
"	11	" cash " " "	100 00	
"	"	" interest	9 88	

Account B—Continued.

Oct.	23	To cash to W. D. Cooke	75 00	
"	"	" interest	7 27	
"	26	" cash " " "	175 00	
"	"	" interest	16 86	
"	"	" cash for cheeses	8 30	
"	"	" interest	77	
Nov.	9	" cash to M'r's Devereux	100 00	
"	"	" interest	9 42	
"	12	" cash paid W. H. Haywood, j'r	200 00	
"	"	" interest	18 73	
"	13	" cash paid G. D. Lander, note	213 33	
"	"	" interest	19 93	
				2,153 20
"	"	" amount carried forward		$22,407 88

315

1847.

		To amount brought forward		$22,407 88
Nov.	13	" James D. Winnis' note	$1,071 27	
"	"	" interest	99 54	
"	20	" cash to W. D. Cooke	60 00	
"	"	" int.	5 54	
"	23	" cash " " "	50 00	
"	"	" interest	4 59	
"	24	" cash to E. Colburn	13 33	
"	"	" interest	1 21	
"	29	" cash to W. D. Cooke	150 00	
"	"	" interest	10 45	
Dec.	24	" cash to W. D. Cooke	150 00	
"	"	" interest	13 00	
"	29	" cash " " "	150 00	
"	"	" interest	12 88	
1848.				
Jan.	4	" cash " " "	200 00	
"	"	" interest	16 97	
"	11	" cash " " "	100 00	
"	"	" interest	8 38	
"	15	" cash to M'r's C. E. Fuller	50 00	
"	"	" interest	4 19	
"	25	" cash to W. D. Cooke	100 00	
"	"	" interest	8 15	
"	28	" cash " " "	50 00	
"	"	" interest	4 06	
Feb'y	1	" cash " " "	40 00	
"	"	" interest	3 21	
"	5	" cash " " "	50 00	
"	"	" interest	3 98	
"	11	" cash " " "	75 00	
"	"	" interest	5 91	
				2,476 66
		" amount carried forward		$24,884 54

316

1848.

		To amount brought forward		$24,884 54
Feb'y	14	" cash to H. D. Cooke	$40 00	
"	"	" interest	3 13	
"	22	" cash " " "	150 00	
"	"	" interest	11 53	
"	26	" cash " " "	50 00	
"	"	" interest	3 81	
Mar.	15	" cash " " "	100 00	
"	"	" interest	7 32	

Account B—Continued.

Mar.	18	To cash to H. D. Cooke	200 00	
"	"	" interest	14 53	
"	20	" cash " " "	200 00	
"	"	" interest	14 46	
"	22	" cash " " "	200 00	
"	"	" interest	14 39	
"	27	" cash " " "	100 00	
"	"	" interest	7 12	
April	1	" cash " " "	50 00	
"	"	" interest	3 53	
"	17	" cash " " "	125 00	
"	"	" interest	8 48	
"	22	" cash " " "	500 00	
"	"	" interest	33 50	
"	26	" cash " " "	150 00	
"	"	" interest	9 95	
May	1	" cash " " "	450 00	
"	"	" interest	29 48	
"	13	" cash " " "	150 00	
"	"	" interest	9 53	
June	10	" cash to Rev. M'r Cassidy	100 00	
"	"	" interest	5 88	
				2,742 64
		" amount carried forward		$27,627 18

317

1848.

		To amount brought forward		$27,627 18
June	20	" D. L. Swain	$4 60	
"	"	" interest	24	
"	22	" cash to M'r's Fuller	50 00	
"	"	" interest	2 84	
"	"	" cash to W. D. Cooke	150 00	
"	"	" interest	8 50	
July	5	" cash to M'r's Fuller	15 00	
"	"	" interest	72	
"	10	" cash to Drury Lacy	75 00	
"	"	" interest	4 31	
"	13	" cash to M'r's Fuller	15 00	
"	"	" interest	69	
"	"	" cash for meal	6 00	
"	"	" interest	32	
"	15	" cash to W. D. Cooke	177 33	
"	"	" interest	9 42	
"	21	" cash to Turell, Johnston and T.	12 28	
"	"	" interest	72	
"	31	" cash paid M'r's Fuller	30 00	
"	"	" interest	1 50	
Aug.	2	" cash to W. D. Cooke	5 00	
"	"	" interest	25	
"	7	" cash to M'r's Fuller	50 00	
"	"	" interest	2 39	
"	21	" cash to " "	25 00	
"	"	" interest	1 17	
"	28	" cash to W. D. Haywood	9 50	
"	"	" interest	48	
Sept.	1	" cash to M'r's Fuller	25 00	
"	"	" interest	1 03	
				683 07
		" amount carried forward		$28,310 25

318

1848.		To amount brought forward		$28,310 25
Sept.	7	" cash paid J. Primrose	$156 38	

Account B—Continued.

Sept.	7	To interest	7 03	
"	15	" cash to E. P. Jones	1 75	
"	"	" interest	07	
"	"	" cash to M'r's Fuller	25 00	
"	"	" interest	82	
"	"	" cash for groceries.	71 29	
"	"	" interest	3 05	
Oct.	1	" cash to M'r's Fuller	25 00	
"	"	" interest	71	
"	3	" cash to T. H. Briggs	137 75	
"	"	" interest	5 48	
"	9	" cash to Chavis	2 08	
"	"	" interest	06	
"	"	" cash to Wattering	13 43	
"	"	" interest	46	
"	"	" bill on New York.	11 00	
"	"	" interest	33	
"	13	" cash to J. M. Towles	25 00	
"	"	" interest	88	
"	7	" Rev. Mr. Lacy.	50 00	
		" interest	1 76	
"	16	" cash paid M'r's Fuller	80 00	
"	"	" interest	3 04	
"	"	" cash to M'r's Fuller.	25 00	
"	"	" interest	85	
Nov.	13	" cash to M'r's Fuller.	50 00	
"	"	" interest	1 68	
Dec.	1	" cash " "	50 00	
"	"	" interest	1 53	
"	"	" cash " "	50 00	
"	"	" interest	1 53	
				804 96
		" amount carried forward		$29,115 21

319

1849.

		To amount brought forward		$29,115 21
Jan'y	1	" cash to M'r's Fuller	$50 00	
"	"	" interest	1 28	
"	"	" cash " " "	80 00	
"	"	" interest	1 71	
"	"	" cash for taxes	13 36	
"	"	" interest	26	
"	26	" cash to Brown & Hinton	32 00	
"	"	" interest	64	
"	"	" J. M. Towles	50 68	
"	"	" interest	1 00	
"	27	" cash to Jesse Brown	24 54	
"	"	" interest	36	
"	30	" cash to M'r's Fulier	50 00	
"	"	" interest	98	
Feb'y	15	" cash " " "	50 00	
"	"	" interest	88	
Mar.	1	" cash " " "	50 00	
"	"	" interest	75	
"	15	" cash " " "	50 00	
"	"	" interest	63	
"	10	" box of wine	25 00	
"	"	" interest	31	
"	30	" cash to M'r's Fuller	50 00	
"	"	" interest	56	
April	7	" cash to C. F. Haight & Sons	24 47	
"	"	" interest	26	
"	9	" Drury Lacy	50 00	
"	"	" interest	43	

Account B—Continued.

April 15	To M'r's Fuller (cash)		50 00	
" "	" interest		40	
				66050
320	" amount carried forward			$29,775 71
1849.				
	To amount brought forward			$29,775 71
April 25	" cash to E. Colburn		$84 00	
" "	" interest		53	
May 1	" cash to M'r's Fuller		50 00	
" "	" interest		28	
" 15	" cash " " "		50 00	
" "	" interest		15	
June 3	" cash to E. Colburn		9 25	
				$194 21
				$29,969 92

321 *Account E, with report of commissioner.*

Balance-sheet of accounts A and B.

M'r's Frances Devereux, in account with Thomas P. Devereux, on account of $50,000, charge on land, $3,000, annuity, and other charges prior to this date; expenditures on her account by T. P. D., and interest on balance due by T. P. D. to date of his bankruptcy, as per this account.

1849.		Dr.	Cr.
June 3	By amount due by Thomas P. Devereux, on ⅔ of $3,000, annuity, int., and other charges, as per ⅔ A		$41,622 39
" "	To amount expended by T. P. Devereux, on account of M'r's Frances Devereux, as per account B	$29,969 92	
" "	By amount of charge on land in gross, as per deed of settlement of July 3rd, 1839, this day appointed by the will of M'r's Frances Devereux		50,000 00
" "	To amount to balance	61,652 47	
		91,622 39	91,622 39
" "	By amount of above balance brought down		61,652 47
1868.			
May 30	" interest on said am't to the date of T. P. Devereux's bankruptcy, as follows:		
	18 years $66,584 88		
	11 months 3,390 86		
	27 days 277 09		
			70,252 83
" "	" total amount of charge on land due this day, and interest		131,905 30
" "	To am't of pecuniary legacies and int., to be charged against this fund, as per decretal order of June 5, 1869, and ⅔ C		39,466 58
	By total balance due this day, as a charge on lands of T. P. Devereux		$92,438 72

322 *Account D with report of commissioner.*

Amounts received by T. P. Devereux as executor of M'r's Frances Devereux.

Estate of M'r's Frances Devereux, in account with S. W. Whiting, agent of Thomas P. Devereux, administrator of M'r's Frances Devereux.

CREDIT ACCOUNT.

1849.				
June 3.	By amount of cash received from John Devereux, crop of 1848		$1,139 00	
" "	" interest on same from date to 31st May, 1868:			
	18 years	$546 72		
	11 months	62 65		
	27 days	5 13		
			614 50	
" "	" sale of house		45 00	
" "	" interest:			
	18 years	$48 80		
	11 months	2 48		
	27 days	20		
			51 28	
" "	" sale of cow		10 50	
	18 years	10 80		
	11 months	55		
1850.	27 days	05		
			11 40	
June 3.	" hire of Tom and Viney		75 00	
" "	" interest:			
	17 years	$76 50		
	11 months	4 13		
	27 days	34		
			80 97	
" "	" sale of bacon		40 81	
" "	" interest:			
	17 years	$40 80		
	11 months	2 20		
	27 days	18		
			43 18	
" "	" hire of Delia		13 00	
" "	" interest:			
	17 years	$13 26		
	11 months	72		
	27 days	06		
			14 04	
" "	" amount carried forward			$2,138 68
323				
1850.				
June 3.	By amount brought forward			$2,138 68
" "	" " cash paid by J. Devereux for rent of land and purchase of stock		2,840 78	
	" interest on same:			
	17 years	$2,896 80		
	11 months	156 20		
	27 days	12 78		
			3,065 78	
" "	" hire of negroes		83 75	
" "	" interest:			
	17 years	25 49		
	11 months	$84 66		
	27 days	4 57		
		37		
			89 50	
" "	" hire of Delia		25 00	
" "	" interest as above		26 99	

Account D—Continued.

1851.				
June 3.	By hire of Delia		25 00	
	" interest as above		25 49	
1852.				
June 3.	" hire of negroes to J. Devereux		150 00	
" "	" interest as above, viz:			
	15 years	$135 00		
	11 months	8 25		
	27 days	68		
			143 93	
" "	" hire of Tom and Viney		80 00	
" "	" interest:			
	15 years	$72 00		
	11 months	4 40		
	27 days	36		
			76 76	
" "	" hire of negroes to J. Devereux		150 00	
" "	" interest:			
	15 years	$135 00		
	11 months	8 25		
	29 days	68		
			143 93	6,936 91
" "	" amount carried forward			$9,065 59
324				
1852.				
June 3.	By amount brought forward			$9,065 59
" "	" hire of Tom and Viney		$75 00	
" "	" interest:			
	15 years	$67 50		
	11 months	4 12		
	27 days	34		
			71 96	
" "	" hire of Delia		27 00	
" "	" interest charged as above		25 91	
Oct. 13.	" amount of valuation of negroes, made by J. Devereux and Kenneth Rayner, which paper is filed by defendants as an exhibit, and marked "P. P."		19,991 00	
" "	" interest on above amount as follows:			
	15 years	$17,991 90		
	6 months	599 73		
	17 days	55 51		
			18,647 14	
1853.				
June 3.	" sale of Delia to James McKimmon		650 00	
" "	" interest:			
	14 years	$546 00		
	6 months	19 50		
	17 days	1 84		
			567 34	
" "	" sale of Sally Ann to S. W. Whiting		500 00	
" "	" interest:			
	14 years	$420 00		
	6 months	15 00		
	17 days	1 42		
			436 42	40,991 77
	Total amount carried to balance-sheet, marked account "G"			$50,057 36

325 *Account F with report of commissioner.*

Disbursements of T. P. Devereux as executor of Frances Devereux.

Estate of M'r's Frances Devereux in ac. with S. W. Whiting, agent for Thomas P. Devereux, adm'r of M'r's Frances Devereux.

DEBIT ACCOUNT.

1849.				
June	18	To am't paid Thomas Card	$2 50	
		" interest to May 30th, 1868	2 64	
"	28	" cash paid M'r's Fuller	65 00	
"	"	" Interest	69 91	
July	7	" Cash paid Perry	34 60	
"	"	" Interest	36 51	
Aug.	15	" Cash to E. Colburn	200 00	
		" Interest	213 50	
"	29	" Cash to W. Thompson	35 35	
		" Interest	36 26	
"	27	" Cash to John King	10 00	
"	"	" Interest	10 60	
"	30	" Cash to W. Thompson	7 50	
"	"	" Interest	7 97	
Sept.	1	" Cash to J. Waltering	12 89	
"	"	" Interest	13 50	
"	3	" Cash to J. Primrose	82 78	
"	"	" Interest	90 25	
"	8	" Cash to Jesse Brown	17 36	
"	"	" Interest	18 10	
"	"	" Cash to H. J. Patterson	25 00	
"	"	" Interest	28 09	
"	13	" Cash to J. Waltering	26 27	
"	"	" Interest	27 15	
1850.				
Jan'y	5	" Cash to K. Jones	40 32	
"	"	" Interest	41 77	
Feb'y	8	" Cash to E. Smith	14 89	
"	"	" Interest	14 54	
"	11	" Cash to J. M. Towles	34 05	
"	"	" Interest	35 60	
"	12	" Cash to W. Strouade	181 81	
"	"	" Interest	187 88	
"	"	Amount carried forward		$1,625 59

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1850.				
		To amount brought forward		$1,625 59
Feb'y	28	" Cash to J. R. Harrison	$4 50	
"	"	" Interest	4 67	
"	24	" Cash to Williams & Haywood	54 32	
"	"	" Interest	56 89	
"	29	" Cash to P. Ward Davis	1 81	
"	"	" Interest	2 04	
"	31	" Pastor's salary	50 00	
"	"	" Interest	52 75	
"	"	" Cash to Crocker & Dudley	2 50	
"	"	" Interest	2 88	
Mar.	1	" Cash to W. J. Clarke	33 57	
"	"	" Interest	34 16	
"	"	" Cash for copying will	25 00	
"	"	" Interest	25 88	
Aug.	21	" Cash paid M'r's Hall	2 00	
"	"	" Interest	2 27	

Account F—Continued.

Dec.	24	To Cash paid J. McKinmon		18 00	
		" Interest		18 60	
1851.					
Jan'y	23	" Cash to B. T. Blake		10 00	
"	"	" Interest		10 41	
Feb'y	10	" Cash W. Putney		17 28	
"	"	" Interest		17 65	
"	25	" Cash to Williams & Haywood		2 75	
"	"	" Interest		2 83	
June	21	" Taxes		8 10	
"	"	" Interest		8 38	
Aug.	1	" Cash to D'r Johnson		15 00	
"	"	" Interest		14 25	
"	15	" Cash to D'r Haywood		617 00	
"	"	" Interest		621 63	
"	"	" Cash on E. Colburn's note		522 50	
"	"	" Interest		526 52	2,786 08
"	"	Amount carried forward			4,411 67
327					
1851.					
		To amount brought forward			$4,411 67
Aug.	15	" W. Murdoch's note		$522 50	
"	"	" Interest		526 52	
"	"	" W. Murdoch's note		522 50	
"	"	" Interest		526 52	
"	"	" Mary R. Wheaton's note		303 36	
"	"	" Interest		305 28	
1853.					
Feb'y	23	" Cash to R. Pinch		88 13	
"	"	" Interest		80 64	
April	28	" Cash to Williams & Haywood		2 50	
"	"	" Interest		2 25	
June	22	" Cash paid Adams, sundries		44 92	
"	"	" Interest		40 28	
"	"	" Cash to W. J. Clarke		84 38	
"	"	" Interest		75 29	
"	"	" Cash to church in Pittsboro'		25 00	
"	"	" Interest		22 41	
"	"	" Cash to Tom March		30 00	
"	"	" Interest		26 89	
"	"	" Cash to Patsey Simpson		12 00	
"	"	" Interest		10 76	
"	"	" Cash for taxes		13 36	
"	"	" Interest		11 66	
"	"	" Cash to Martha Simpson		11 73	
"	"	" Interest		9 86	
"	"	" Cash paid E. Colburn		67 40	
"	"	" Interest		60 06	
"	"	" Cash paid Sheriff Bertie		129 52	
"	"	" Interest		115 63	
"	"	" Cash for support women and children, 2 years		180 00	
"	"	" Interest		161 34	4,012 69
					$8,424 36

328 *Account G with report of commissioner.*

Balance sheet of accounts "D" and "F."

Thomas P. Devereux in account with the estate of M'r's F. Devereux, as administrator, as per accounts D and F.

		Dr.	Cr.
1868. May 30	To amount of personal property, and interest received by him to this date as per account "D"	$50,057 36	
	By amount expended by T. P. Devereux on account of his administration, as per account "F"		$8,424 36
		$50,057 36	8,424 36
	To amount to balance		41,633 00
		$50,057 36	$50,057 36
	To amount of balance due estate of M'r's F. Devereux on account of the administration thereof by T. P. Devereux		$41,633 00

329 *Account C with report of commissioner.*

Legacies paid by Thomas P. Devereux.

Estate of M'r's Frances Devereux in a/c with Tho's P. Devereux, on account of the balance of annuity of $3,000, and of $50,000, charge on land, against which the pecuniary legacies in the will are to be charged.

1849. June 3	To amount of legacy to Thomas P. Devereux, in trust for certain annuities mentioned in will		$7,500 00	
" "	Int. on same to May 31st, 1868, date of bankruptcy of T. P. D., as follows:			
	18 years	$8,100 00		
	11 months	412 50		
	27 days	33 75		
			8,546 25	
1850. Sept. 28	Amount of legacy paid to the "board of education of the Presbyterian Church of the United States of America"		2,000 00	
" "	Int. on same to May 31st, 1868, as follows:			
	17 years	$2,040 00		
	8 months	80 00		
	3 days	1 00		
			2,121 00	
Oct 1	" amount of legacy paid "board of home missions of the Presbyterian Church"		2,000	
" "	" int. on same to May 31, 1868, as follows:			
	17 years	$2,040 00		
	8 months	80 00		
			2,120 00	
1851. Sept. 2	" amount of legacy this day paid "Caldwell Institute"		4,000 00	
" "	" int. on same to May 31st, 1868, as follows:			
	16 years	$3,840 00		
	7 months	160 00		
	28 days	18 67		
			4,058 67	
	To amount carried forward			$32,345 92

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Account C—Continued.

1851	To amount brought forward		$32,345 92
Nov. 4	" " of legacy paid "board of foreign missions of the Presbyterian Church"	$2,000 00	
" "	" int. on same to May 31st, 1868, as follows:		
	16 years $1,920 00		
	6 months 60 00		
	26 days 8 66		
		1,988 66	
1858.			
Dec. 24	To amount of legacy this day paid "Union Theological Seminary"	2,000 00	
" "	To interest on same to May 31st, 1868, as follows:		
	9 years $1,080 00		
	5 months 50 00		
	6 days 2 00		
		1,132 00	
			7,120 66
1868.			
May 31	To total amount due Thomas P. Devereux, at this date, on account of the pecuniary legacies paid by him, which is carried to general balance-sheet marked account "E"		$39,466 58

331 *Opinion of referee, No.* 1, *supplemental to report of commissioner.*

GINFILL BLAKE, WIFE, ET AL.
vs.
ASSIGNEES IN BANKRUPTCY OF T. P. DEVEREUX ET AL.

The referee has most carefully considered the evidences heretofore laid before him in this cause, the arguments of counsel, and all the authorities placed before him.

The defendant offers in evidence a book, in which it was proved accounts between M'r's Frances Devereux and T. P. Devereux were kept by John Devereux, the grandson and son respectively of the above parties, as agent for his father for that purpose. That said John Devereux, or his father, each year handed copies of entries in said book to M'r's Devereux, and that those copies were received by her without objection for a long course of years. It was also proven that only the copies of the entries, and not copies of the vouchers or the vouchers themselves, came into the possession of M'r's Devereux. It was also shown that Thomas P. Devereux alone could be absolutely certain of the correctness of said vouchers. It further appears that T. P. Devereux was a lawyer of no ordinary skill, foresight, and legal learning, and it appears to the referee that he did know, or ought to have known, that the
332 relation then existing between himself and mother required the most careful dealing, and it, in the opinion of the referee, has not been shown that the manner of keeping said account-book and handling said vouchers came up to the legal requirements under the circumstances. The defendants contend that the book should be received—

I. Because it contains abstracts of the payments made by T. P. D. to and for M'r's Frances Devereux.

The referee cannot take it upon himself to say that upon the law and

the evidence adduced before him that said book is evidence, even admitting that it was an abstract of the vouchers, considering the mode in which the book was kept, and that the vouchers themselves, if produced, would require the most strong and searching testimony to sustain them.

II. It is admissible as a book of original account, copies of which were annually furnished to M'r's Frances Devereux and retained by her without objection. The retaining of them by her does not under the circumstances, in the opinion of the referee, warrant him in receiving the book as evidence in this point of view, as in seems to him that her implied admission, if the relation of cestuique trust or general
333 agent did exist, which the referee thinks did, cannot be received in evidence without better, stronger, and clearer evidence that M'r's Devereux understood fully the nature and substance of said writings, than has thus far been laid before him.

III. The book is evidence, as an old account, containing matters of charge and discharge, and appearing to be fairly kept: loss of the vouchers being satisfactorily accounted for.

The referee cannot think this proposition to be a good one, for it has been proven that said book was kept by the trustee himself, or his agent, and that it was not a contemporaneous record of his transactions, but only a statement made up annually from data furnished by him to his agent.

The referee, for these reasons, therefore, feels himself forced to reject the book in each and every point of view in which it has been offered by defendants, and so rules.

In coming to this conclusion, he is to a very great extent governed by the law laid down in the case of Lee et al. vs. Pearce, wife, 68 N. C. Reports, p. 76.

October 23rd, 1873.

E. F. PAGE,
Commissioner.

Exhibit M M with report of commissioner.

Opinion of Chief Justice Chase, at June term, A. D. 1869.

334 Circuit court of the United States, district of North Carolina.

UMSTEAD AND WIFE AND GEORGINA DEVEREUX
v.
THOMAS P. DEVEREUX & OTHERS.

This is a suit in equity to compel an account. George Pollok died about 1830. He left one sister, named Frances, who married John Devereux, and a large estate, consisting of lands, slaves, and other property. John and Frances Devereux had three children, Thomas P., George, and Frances Ann. George married Sarah Elizabeth , and died leaving two children, Georgina and Ann Elizabeth. The latter married Frank Umsted; the former remained single, living with her mother, who had removed from North Carolina to Connecticut. In 1839 John and Frances Devereux executed a deed, conveying all the real estate, and John Devereux executed a deed, conveying all the personal estate, derived from Pollok, to their son T. P. Devereux. Each deed contained clauses charging the estate conveyed with an annuity of $3,000 a year in favor of M'r's Frances Devereux, and also created a trust in her favor

to the amount of $50,000, subject to be disposed of by her appointment by will or otherwise. Subsequently, in 1845, M'r's Devereux, then
335 a widow, executed an explanatory deed, declaring the annual payment of $3,000 to be interest on the $50,000, and subject to reduction in proportion to reductions made in that sum under her directions. Two (2) years afterward, M'r's Devereux died, leaving a will, in which she declared that she intended to exercise the power of appointment. The will provided for the payment of certain legacies, and also for the disposal of certain property, and the payment of her debts. T. P. Devereux was one of the executors named in the will. He, however, renounced the executorship, as did the others named; and an administrator, with the will annexed, was appointed. But, notwithstanding this renunciation, T. P. Devereux exercised a large control in the administration; bought up several of the legacies, and claimed the right to the whole estate, including the profits made by these purchases to the exclusion of the children of George Devereux. It must be remarked that the deeds of settlement provided that the whole estate granted by them should vest in T. P. Devereux; and that any residue of the sums placed in trust of M'r's Devereux, which might remain undisposed of under her direction, should also lapse to him. Under these circumstances,
336 Umsted and wife, and Georgina Devereux, filed their bill alleging that they were entitled to the balance of the estate of M'r's Francis Devereux, after payment of the debts, as co-heirs with T. P. Devereux and Frances Ann, who had married Bishop Polk of Tennessee.

The case was fully argued by M'r Fowle and M'r Haywood for the complainants, and by M'r Moore and M'r Bragg for the defendants.

Upon this case the court is of the opinion that an account must be taken (1) of the payments out of the annuity of $3,000, or out of the $50,000 in trust, to or by direction of M'r's Devereux; (2) of the charitable bequests in the will, and of the sums actually paid in satisfaction or purchase of them; (3) of the balances, if any remaining, of the $3,000, and $50,000, after deducting the sums paid to or by direction of M'r's Devereux, during her life, and in satisfaction of legacies since her death; (4) also of the administration of the estate of M'r's Devereux, showing the amount of assets, (excluding balances, if any, of the $3,000 and $50,000,) and of the debts paid, and the balance, if any; and for this purpose the same is referred to N. J. Riddick, as master, for examination and report; and until the coming in of the report, all questions are reserved.

Depositions of John Devereux, No. 1, with report of commissioner.

RALEIGH, *October 20th*, 1873.

337 Depositions taken in the cause of Grinfill Blake, wife, et al. vs. William J. Hawkins and Walter A. Clarke, assignees in bankruptcy of Thomas P. Devereux, deceased, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux.

Examination of John Devereux:

JOHN DEVEREUX, being duly sworn, deposeth as follows:

This book came to me from my father, for the purpose of entering the account between my father and his mother. He also used it for other accounts. I think I got it in the latter part of 1840 or first part of 1841, though I cannot state positively the date. The entries in said

book up to June 21st, 1847, are in my handwriting; the entries in a different handwriting on pages 34 and 35, were in my father's handwriting; the entries on pages 37 and 38 are also in my father's handwriting. The balance of the entries up to June 21st, 1849, are in my handwriting. The account spoken of in this deposition is that between my father and grandmother, based on the "deed of settlement" of July 3rd, 1839. I think that my entries made in this book were begun about the last of 1840, or first 1841, when this book was bought for the purpose of keeping said account. This book was written up, and the account balanced once in every year, within a month after the 21st June of each and
338 every year. The items entered on this account were from vouchers handed me by my father. The accounts were made up and submitted to my grandmother each year, but it is my impression that the vouchers were not, though my impression as to the last statement is more a matter of judgment than memory, but the vouchers were really for her inspection, if she had called for them. The entries in the book were made once a year from vouchers furnished me by T. P. Devereux, but it was not a contemporaneous statement of vouchers from day to day, as expenditures were made. As far as I recollect, she never called for the vouchers. The state of my grandmother's affairs, and especially the yearly account, presented by my father or myself, would come up in conversation between my grandmother and myself after each annual statement, but the account was not formally discussed. My grandmother knew that this account was kept by me. In the conversations alluded to above, my grandmother would regret that she had spent so much during the year, and express her determination not to spend so much during the ensuing year. She never raised any objections to any items in the account made up until about the year 1844 or 1845, I am uncertain which, when she commenced objecting to certain charges
339 against her, which were afterwards, by consent, made the subject of reference to arbitrators. This reference was made to Bishop Polk, D'r S. J. Baker, and S. W. Whiting, certain items being referred to Baker and Whiting together and others to Bishop Polk alone. Bishop Polk made no award in writing, but Baker and Whiting did. The whole account, up to June, 1846, between my grandmother and father, was referred to S. W. Whiting, and by direction of both parties I turned over the vouchers to him. I think this arrangement was arrived at in the summer of 1846. I have never seen the vouchers since they were turned over to Whiting. There was a voucher for every item charged in the account, except certain items admitted by her, which from their nature did not admit of a written voucher.

Cross examination of John Devereux on behalf of plaintiffs:

The book which contained the accounts between my father and grandmother, and which was mentioned in my examination-in-chief, was never submitted to my grandmother so far as I know. When I spoke of the accounts submitted to my grandmother I did not mean the book itself, but copies of the entries in the same for the current year, which
340 entries were made by me. When the first item charged against M'r's Frances Devereux, of $4,099\frac{45}{100}$, and all entries made by me were entered, the evidences I had to support said charges were my general knowledge of the account, checks endorsed by M'r's Devereux, receipted accounts against her, cancelled notes signed by her in the possession of my father. This is what I meant by vouchers to support each item. Most of the annual accounts heretofore spoken of by me, copies of which were presented by me, were done so personally, and to my

knowledge all of the vouchers for accounts spoken of above were delivered to S. W. Whiting at the time he was chosen to state the account between M'r's Frances Devereux and my father. In conversations with M'r's Frances Devereux she more than once acknowledged that Whiting was authorized by her to state the account.

Re-examination of John Devereux for defendants.

The copies of the annual accounts, which I speak of handing to my grandmother, I afterwards saw in S. W. Whiting's hands, but never got a sight of them after that. For the above accounts, and the vouchers therefor, I have searched among the papers of my father, T. P. Devereux, and did not find them. I also, during the lifetime of George
341 W. Mordecai, who was the administrator of S. W. Whiting, and one of the assignees in bankruptcy of Thomas P. Devereux, made search, under his direction, among his papers, for the papers appertaining to the management of my father of the affairs of my grandmother, and did not find them. This latter search among M'r Mordecai's papers was made, not for these particular vouchers, but for all the vouchers connected with my grandmother's estate. I have made no other search, not knowing any other place in which they were likely to be.

Cross-examination:

M'r's Margaret Mordecai is executrix of George W. Mordecai, deceased.

Question. Have you any reason for knowing or believing that any search was made by any person for the accounts and vouchers referred to, between the time when this suit was instituted and the time when you made search as aforesaid?

Answer. I have no knowledge of any such search, and have no reason to believe any such search was made.

Question. At what time did you make the search alluded to among your father's papers?

Answer. In the fall of 1869, when I made the search upon request of M'r Mordecai, and found no vouchers, except those heretofore produced in this cause. Upon being asked by M'r Mordecai if there were
342 no more, I made further search, but found none. The search among M'r Mordecai's papers was made in December, 1870, shortly before his death, in February, 1871. These vouchers were kept in the vaults of the Bank of the State, until they were delivered by me to S. W. Whiting. M'r Whiting was then teller of the State Bank, and was with me when I took them from their then place of deposit, and they were delivered to him in the bank. They were kept in a tin box, which I kept in the bank, containing other valuable papers also. This box was used by my father and myself jointly, as a deposit for our valuable papers. The box was never taken by me from the bank, nor have I personal knowledge of how it was removed therefrom. I saw it in my father's possession, at his plantation, in Halifax County, in 1857, or 1858, shortly after he ceased being a citizen of Raleigh. I had frequent access to the box after that time, and never saw the vouchers alluded to above again, though I, from time to time, looked in the box on other business, examining other papers, though they were so bulky that I should have seen them if they had been there. When I handed the vouchers to M'r Whiting I gave him no special instruction as to what disposition should be made of them after the account was stated
343 by him. I have never made any particular search in the State Bank for these vouchers. I went there, at one time, and asked for all my father's papers, which were given me, but the vouchers were

not among them, and I did not get the tin box above alluded to. This demand for papers was made after I saw the tin box above alluded to at my father's plantation, in Halifax County, in his possession. My father kept his bank-accounts in the Bank of the State of North Carolina, at Raleigh, between July, 1839, and January, 1847. His pass-books with said bank are, many of them, in my possession; but I cannot say, certainly, whether the books embracing the above period are in my possession or no.

Cross-examination of John Devereux:

My father was a member of the legal profession. He left the bar in 1839, and I believe, had a very fair standing in the profession, after a practice of several years. I think he was called to the bar in 1815. He was reporter of the supreme court of North Carolina for about four years, and joint reporter with William H. Battle for about four years more.

At the time when the deed of settlement was made in 1839 M'r's Frances Devereux (who was about 68 or 70 years of age) owned a life-estate in a plantation in Bertie County, containing about 4,400
344 acres, worth, on an average, $25.00 per acre, and the gross income of which I would average at $5,000, the net income at $1,500 less, which, at that time, was in possession of her husband, and cultivated by him.

Re-examination of John Devereux for defendants:

The character of my grandmother's intellect was, I should think, rather above the ordinary. She was a woman of strong, vigorous mind, and thoroughly capable of attending to her own pecuniary interests.

Further examination of John Devereux for defendants:

Q. Look upon the ledger, heretofore referred to in your examination, and say why, and upon what, you made the entry to the debit of M'r's F. D. of $4,099.45, of the date of April 15th, 1840.

(This question and the answer thereto was excepted to by the counsel for plaintiffs.)

A. Upon evidence then submitted to me, which I regarded as abundantly satisfactory; but, at this distance of time, I cannot say specifically of what such evidence consisted, whether of checks to her order, endorsed by her, receipted accounts against her of third parties, or cancelled notes due third parties by her.

Q. Do you make a similar answer to all the other items debited to M'r's Frances D. upon that ledger, entered by you? or if your answer is different, specify the items.

345 (Question and answer excepted to as above.)

A. I make a similar answer to all items, up to the 21st June, 1846; from that time on the vouchers have been filed with the referee.

Q. State whether or not you made any entries of debit to M'r's F. D. from April 15th, 1840, to 21st June, 1846, for which you did not have satisfactory vouchers, or her concurrence in the charge, or personal knowledge of the propriety of the charge.

(Q. and A. excepted as above.)

A. I did not.

Cross-examination of John Devereux:

Q. When you say, in reply to the last interrogatory, you had satisfactory vouchers, &c., to whom do you mean that they were satisfactory?

A. Satisfactory to me of the expenditure of that amount of money.

Q. Were there not among the papers, which you style vouchers, and which were presented to you by T. P. D., and which went to make up the charge of $4,099.45, any notes signed by T. P. D. himself, which he professed to have given, on account of his mother, and to have subsequently taken up, and for which he claimed credit, which you gave him?

A. At this length of time, I cannot say positively that there were or were not papers of any special character. I feel confident, however, that there were none of the kind mentioned in the Q.

346 Q. Was there not a note of the description specified in the last interrogatory, payable to Colin M. Clarke, of upwards of $500.

A. I have no recollection of it.

Q. Is there any one paper, upon which you acted in making said entry of $4,099 $\frac{45}{100}$, of which you have a distinct recollection, and of which you can give an exact description?

A. Day before yesterday I should have answered there was none, but in looking for my father's pass-book, between 1839 and 1846, as was requested in this examination, I find memoranda, in his handwriting, of many, or perhaps most, of the items, which went to make up that charge. But these memoranda will not enable me to give a distinct and exact description of the said debit.

Q. State the substance and effect, if you can recollect them, of any voucher submitted to you, upon which you made up the sum of $4,099 $\frac{45}{100}$?

A. At this distance of time I cannot pretend to do so.

Q. State the substance and effect, if you can, of any voucher submitted to you during the whole period embraced in the book, up to the 21st June, 1846, upon which you acted in making your entries.

Answer. When I made the entry on page 20 to my grandmother's debit, as follows, viz, "To my bond to M'r's S. E. Devereux, given

347 by your direction, $5,000 $\frac{00}{100}$," I had a personal knowledge of his giving such a bond at the request of my grandmother. I know that it has been subsequently paid, and I see no other item that I now recollect the particulars of, except the entry regarding the trent land, on page 26, and for this there was no written voucher.

Q. Upon what evidence and under what circumstances did you make the entry of which you have last spoken?

(Q. and A. objected to by counsel for defendants.)

A. From repeated conversations on the subject with my grandmother and her husband, in explanation. The trent land was part of that conveyed by deed of 3rd July, 1839; the title proved bad as to one-half of said land, which half was received by the claimants from Thomas P. Devereux. John Devereux, M'r's F. D.'s husband, and my grandmother told the said F. D. that she ought to allow T. P. D. a credit of $4,000 on her claim against him, by reason of this loss. She frequently, in my presence, assented to said claim and its fairness, and, so far as my recollection extends, M'r's F. D., during her life time, never objected to the charge itself, but to the interest, as charged thereon.

Q. Can you undertake to say that you were familiar with the handwriting of all the persons, to whom Thomas P. Devereux paid money, on account of his mother; that you had seen them write, or

348 seen writings which were admitted to be in their handwriting, so that you could pronounce a reliable opinion, as to its genuineness, upon seeing a specimen of any such handwriting.

A. I cannot.

Q. Did you, when any receipted account against M'r's D. was presented to you, and claimed as a voucher by T. P. D., investigate the propriety and genuineness of said account, or allow the same simply upon its presentation as aforesaid, assuming its propriety and genuineness of the receipt?

A. In case of well-known firms and houses in town no such investigation was made. In case of unknown parties, her order in most, if not all, was endorsed on the account. There might have been some which were taken from my personal knowledge, verbal admissions and orders by her.

Re examination by defendants:

Q. Is your recollection now so refreshed, upon looking upon the ledger, that you can say that the items therein debited to M'r's F. D. were expenditures made for her and at her request?

A. I can hardly say that my memory is refreshed, having always felt confident that they were so made.

Q. Please explain what you mean by your answer to the last interrogatory.

349 A. I mean that, having made out the accounts myself year by year, on evidence at that time satisfactory to me, it does not need an examination of the ledger to enable me to say now that the entries in my handwriting therein were of sums expended for the benefit of M'r's Frances Devereux.

Cross-examination:

Q. Do you swear, as a fact within your own knowledge, that Thomas P. Devereux laid out every sum, with which you have credited him in said account, for M'r's F. D., and on account of a debt for which she was legally bound?

A. I can only swear that he furnished me with evidence, which was satisfactory to me, at the time of such expenditures.

Q. In your reply to the last interrogatory by the defendants, you say, "It does not need an examination of the ledger to enable me to say now, that the entries in my handwriting therein were of sums expended for the benefit of M'r's F. D." Do you mean by this answer to say, that such was your opinion, upon the evidence then offered you when you made such entries, and such is your opinion now; or do you mean to assert it as a fact within your own knowledge that each of said disbursements was made for the benefit of M'r's F. D., for a debt that was justly due by her and by Thomas P. Devereux?

350 A. I mean to say that such was my opinion at the time, based upon the evidence furnished me then, and such is my opinion now.

Re-examination by defendants:

Q. Look at the paper marked "E. E." Have you ever seen it before; if so, when and where?

A. I have seen it frequently before. I saw it in my father's possession in the year 1847, I believe, first.

Q. State whether you saw it in your father's possession frequently, and where it was found after his death.

A. I saw it frequently in his possession among his papers. After his death it came into my possession through the hands of M'r Mordecai, who took charge of his papers at his death, I being absent from the State.

(The signature to this paper is admitted by plaintiffs to be in the proper handwriting of M'r's Devereux.)

A. Do you know why and when S. W. Whiting examined the accounts between F. D. and T. P. D., as was stated in this paper that he had done?

A. In the summer of 1846, the discussion of the account rendered the 21st June, 1846, was very frequently up between my father and grandmother in my presence. After many discussions the conclusion was arrived at, at what time I cannot state positively, to have the accounts examined by Whiting, and in consequence of that conclusion I handed M'r Whiting the vouchers.

351 Q. Were the vouchers you handed Whiting, in support of the account of 1846, alone, or for that year altogether with other years?

A. The account was made up usually from the 21st of June to the 21st June of each *each* year. The vouchers for each year, tied up in a separate bundle, and by me handed by me to M'r W., as before stated, in the bank. These vouchers were all I had from the opening of the accounts 15th April, 1840, to 21st June, 1846. I have a very distinct recollection that M'r Whiting wrapped the vouchers of each year in the copy of the account for that year; and since then I have never seen them. Copies of the account were not furnished M'r W. by me, and, as far as I know, not by my father.

Q. Was M'r Whiting an intimate friend of your grandmother's?

A. As much so as a man of his age would naturally be with a woman of her age; she having been intimately acquainted with his mother, and all parties having confidence in his clerical skill and fairness.

Q. Did M'r's Frances Devereux reside with your father?

A. She did not.

Q. Did you ever, at any time, hear your father advise M'r's F. D. with regard to her affairs?

A. Never, except the negative advice, not to spend so much money.

Cross-examination:

352 Q. State the character of the discussions between your father and M'r's F. D., which precedes the reference to Whiting to state an account, and if it involved only differences of opinion regarding the account rendered on the 21st June, 1846. State further, at how many of such discussions you were present, and whether you took any part therein.

A. The character was a general one of the whole accounts, and did not involve those of the year ending June 21st, 1846, more particularly than those of any other year. I can't state with any certainty what specific conversation occurred at any particular time. The disputes between them mainly concerned differences of opinion upon the items, which were subsequently referred. I was present at several—six, eight, or ten—of such conversations. It is impossible to state the number with any certainty, and took but little part in the discussion.

Q. Have you not stated in a previous part of your examination that M'r's F. D. received the annual accounts rendered by you and all of them, and retained them, without any dissent or objection?

A. None expressed to me at the time of rendering. This is what I meant.

Q. Do you know, of your own knowledge, and not by reason of information derived from any one else, whether M'r Whiting ever completed the statement of accounts between the parties?

A. I do not. I have no recollection of ever having seen the account made out by Whiting.

353 Re-examination:

Q. State what you know about Whiting's having completed the account.

A. I know, of my own personal knowledge, nothing; as it was my habit at that time to leave town early in October, and return the following June, with only rare and casual visits to the place between those dates.

Depositions of John Devereux "No. 2," with report of commissioner.

Further examination of John Devereux for defendants:

In relation to the charge of $1,000 for Booker, April 15th, 1841, I know that Booker was a slave and bought, at my grandmother's instance, for a carriage-driver, and came into her possession as such. If I had not seen the entry in the book I should not have recollected the price of said slave, but must have had the bill of sale before me when such entry was made, and having the book before me I am satisfied that such amount was correct. On the settlement of my grandfather's estate my grandmother dissented from the will, and was entitled to a child's part. The executors only sold the surplus crop of that year. The balance of the estate was divided, without a sale, each of the distributees paying their proportion of the debts of the estate. I know that there was a balance due the executors, though I am not certain of the
354 exact amount, though I have no doubt it was exactly four times the amount charged June 21st, 1847, in the ledger heretofore alluded to, as being one-fourth of the balance due the executors, that being M'r's Devereux's part. In regard to the item charged "To your one third part of stock, valued by George W. Mordecai," June 21st, 1847, in said ledger, instead of sale of the stock by the executors, the parties in interest agreed that it should be valued by M'r Mordecai, and they would take the stock, it being in contemplation to continue the farm, M'r's D. putting in one-third, and I putting in two-thirds.

(Counsel for plaintiffs excepts to all the evidence regarding any settlements made regarding the estate of John Devereux, sen., deceased.

Quere. What was the relation existing up to 1847, so far as you recollect, between Miss Ogden and M'r's F. D., and between the former and your father, T. P. Devereux?

Ans. Intimate friendship existing, so far as I can understand, between my grandmother and Miss Ogden in early youth. I know of no particular relations between my father and Miss Ogden. Miss Ogden's residence was Connecticut, in which State my grandmother resided for some time. Never, to my knowledge, did Miss Ogden visit my grandmother or father in this State.

Q. State any fact you know which would lead you to believe
355 that your grandmother directed your father to pay Miss Ogden her annuity?

Ans. I know of none in my own knowledge, except that heretofore stated of my grandmother receiving the accounts yearly and making no objection to them.

Q. Please state the connection existing between your grandmother and Mrs. C. E. Fuller, towards the latter part of your grandmother's life.

Ans. Mrs. Fuller lived with her, as housekeeper and general manager

of my grandmother's household affairs, and acted also as a kind of distributor of her charities about the neighborhood. There was no connections of friendship or business between Thomas P. Devereux and Mrs. C. E. Fuller.

Q. What was the religious persuasion of your grandmother?

Ans. Presbyterian. My father was an Episcopalian.

Q. Was your grandmother a devotee to her religion and given much to religious charities?

Ans. Very strict in her religious observances, devoting the greater part of her time to them, and exceedingly fond of making donations for supposed religious and charitable purposes.

Q. Did your father, as far as you know, have any sympathy with your grandmother in such supposed charitable donations?

Ans. None; but disapproved of the indiscriminate and lavish use of money in that way.

Q. Do you recollect or know anything regarding the annuity to Mrs. E. Rives, and how it came to be disallowed by S. W. Whiting,
356 in his statement in October, 20th, 1846?

Ans. Mrs. Rives was an intimate friend of my grandmother's, and had been very kind to my father, during his boyhood and youth. I know nothing of the matter, except from conversations on the subject with my father.

Q. Please state, if you know, what connection existed between John Primrose and your grandmother?

Ans. Mr. Primrose, being an elder in the Presbyterian Church, commanded great respect, esteem, and confidence, and was trusted by her in the management of any of her pecuniary matters, before Mr. W. D. Cooke formally assumed the management.

Cross examination:

Quere. Do you know that Mrs. F. D., about the year 1845, objected to T. P. D's paying an annuity to Miss Ogden, on her account?

Ans. Yes.

Q. Do you know that the question of the propriety of the payment of this annuity by Mr. Devereux, on account of his mother, before the year 1845, was referred by Mr. D. and Mrs. F. D. for decision, to Bishop Polk, and that the bishop made a decision adverse to the claim of Mr. D. to be allowed this annuity?

Ans. I know the fact from conversations with my father.

Q. Have you any knowledge that Mrs. Frances Devereux an-
357 thorized Thomas P. Devereux to pay money on her account to Mrs. C. E. Fuller?

Ans. I have no knowledge.

Q. Have you any knowledge that Mrs. F. D. authorized T. P. D. to pay money on her account to John Primrose?

Ans. I have no knowledge.

Q. Who were the executors of John Devereux?

Ans. T. P. Devereux and myself. We both qualified as such.

Q. Did Mrs. F. Devereux owe the executors of John Devereux; if yes, what was the amount?

Ans. Yes; one-fourth of the balance which appeared due by the account-current, which was her share as one of the distributees of the estate.

Q. Her share of what?

Ans. The balance due the executors on a settlement.

Q. Have you any distinct recollection of what the amount of that balance was?

Ans. I have not but the account-current will show.

Q. Did the executors of J. D. Devereux return any inventory?

Ans. They did not.

Q. Have you any recollection of Mrs. F. D.'s having drawn an order on you for $1,300, and upwards, in favor of Thomas P. Devereux, to settle the full balance due by her, on account of the debts of her
358 husband's estate and the purchase of stock on the farm; and do you know what has become of such order, if you have any recollection of it?

Ans. I have no recollection of ever seeing any such order; indeed, I am quite confident I never saw it.

Re-examination for defendants:

Q. In your cross-examination you stated that, in conversations with your father, he had told you that Bishop Polk had made some decision about Miss Ogden's annuity. Please state all that your father told you in such conversations bearing on that subject.

Ans. He expressed great dissatisfaction at the little attention which Bishop Polk had given to the matter, and said he had requested him to put his decision in writing; but that up to that time he had failed to do so. He expressed a determination not to be bound by Bishop Polk's decision in its then present form, giving as a reason for such determination on his part, that he regarded the Ogden annuity matter as thoroughly understood and settled years before between him and M'r's Frances Devereux, as would appear by his accounts, and on that point he did not intend to recede.

Q. In stating his dissatisfaction at the finding, did he state the origin of the annuity—how the annuity came to be made?

Ans. I cannot undertake to say.

359 Q. What did you understand from your father? Was the question submitted to Bishop Polk?

(Q. objected to by counsel for plaintiffs.)

A. Chiefly as to the Ogden annuity.

Q. What do you mean by the Ogden annuity?

Ans. I mean the annuity which was charged on the account as paid to Miss Ogden.

(The defendants offer in evidence the account-current of Thomas P. D. and John D., the executors of John Devereux, deceased, with the estate of their testator, as transcribed in the record-books of the county court of Wake, a copy of which is herewith filed, marked "F. F.," which is objected to by the plaintiffs.)

Q. Is this amount correct?

A. Not having examined the copy I can't say that the copy is, but the original was.

(Question and answer objected to by plaintiffs.)

Q. Do you know what became of the original?

Ans. I must be in the clerk's office if not destroyed.

J. DEVEREUX.

Sworn and subscribed before me, this 25 day of November, 1873.

E. F. PAGE,
Commissioner.

360 *Depositions of W'm D. Cooke with report of commissioner.*

Examination of William D. Cooke for defendants, assignees in bankruptcy of T. P. Devereux, deceased.

WILLIAM D. COOKE, being duly sworn, deposed as follows:

The paper marked "B B," is an account made out by me, not from any vouchers coming within my personal knowledge, but from data given me by T. P. Devereux and his mother. My signature thereto "E. E., correct," was not made, as agent of M'r's Devereux, binding upon her, but merely made to certify that the said account was correct according to their directions. I am satisfied that I returned this paper, or a copy of the same, to M'r's Devereux. I am satisfied that all the items in above account were agreed to by both parties before they were entered by me. My best recollection is that the paper marked "B B," above referred to, was the very one given by me to M'r's D., and that memorandum entered at the foot of the account was made at her request at her house after the account was made out by me at my house, which memorandum begins, "It is understood," &c.

Cross-examination of W. D. Cooke:

The making out of said account was mere clerical labor on my part. I was not acting as referee to take an account between the parties, and did not pass upon or undertake to pass upon any of the items.

W'M D. COOKE.

361 Sworn and subscribed before me this 21st of October, 1873.

E. F. PAGE,
Commissioner.

Re-examination of W. D. Cooke:

At the request of M'r T. P. Devereux, I called on M'r's Frances Devereux, about the 8th November, 1847, and had a conversation with her concerning certain matters of account between her and M'r T. P. D. I remarked to M'r's D. that there were some matters of difference between her and her son, which I thought ought to be settled. She then asked me if I knew anything about the matters, if I had examined the subject. I replied to her that I had, and that I thought that M'r D. was right in the manner in which he wished to settle it. She then said, "Go, and settle it." I think these were her very words. I then went back to M'r T. P. Devereux's and told him what she said, and got from him the data upon which the settlement was made. One of these items was in regard to the loss of the Trent land, another in regard to money paid to Miss Ogden, another concerning the Pollock monument, and the last regarding the family burying-ground. There was an agreement made regarding the above items by the parties. The agreement was
made in accordance with my suggestion, but my suggestion was
362 made in accordance with M'r T. P. Devereu's suggestion.

I wish to modify the last statement by saying that the settlement was made by me, in accordance with M'r Devereu's statement, after he satisfied me that he was correct. (Statement of interview with T. P. D. and M'r's D. concerning the account.)

One day, about the 8th November, 1847, on passing M'r T. P. D's house, on my way to M'r's F. D's, M'r D. called me, and remarked that there was a matter or matters of difference between himself and his mother, which he was very anxious to have settled; that he had re-

peatedly tried to settle the same with his mother, but had failed; that he was very anxious to get her to settle it; that if anybody could get her to do so, I could. I replied that I should be very glad to do so, if I could. He then requested me to walk in and examine the matter, which I did. After a full examination of the matters in dispute, I was satisfied that M'r D. was right in the manner in which he wished to settle it. I then went on to M'r's Devereux's house. I was the attorney of M'r's D., under a power of attorney from her, which is hereby produced, marked "C C." (Complainants admit the said power of attorney.)

My relations to M'r's D. were more those of a mother to a son
363 than any other way. She seemed to treat me as a son, and I regarded her almost as a mother. She talked to me freely concerning all her business matters. I don't know that she ever spoke to me regarding family affairs more than she would say to anybody. She never made me a confidant regarding family matters, or told me more regarding them than she would have told anybody else. Regarding the business relations between her and her son, I knew that he had funds in his hands, upon which she had a right to draw, and I knew of the disputed items between them, hereinbefore mentioned. I recollect no other disputed items between them.

Quere. by defendant. Do you remember ever seeing in the possession of M'r's D. annual accounts respecting the fund of $50,000, rendered by T. P. D.?

Ans. I have a faint recollection of seeing such accounts, but whether in the possession of M'r or M'r's Devereux, I cannot say, though my impression is, that they were not rendered annually, and I have further impression that I have had such a statement, and may have them now. If I had them, I must have gotten them from M'r D., couldn't have gotten them anywhere else. M'r Devereux was not in the habit of making a settlement with me of this fund annually at all; I have reference to the settlement of this $50,000 fund.

364 Quere. Did M'r's D. usually overdraw her annual allowance?

Ans. During the latter part of her life, her dratts amounted to more than $3,000 annually, which was the amount agreed upon that she was to draw annually, being the interest upon $50,000.

Cross-examination of W. D. Cooke:

Quere. How long a time was consumed in your interview with M'r D. just preceding your interview with M'r's D., mentioned in the first part of your deposition taken to-day?

Ans. I could not state positively, but my impression is that it was about an hour.

Quere. In that interview with M'r D. state what occurred, as far as you can recollect it, and all that occurred.

Ans. That would be a repetition of what I have already stated. I can state it, but it would be the same.

Quere. Did you not state to me, in conversation this morning, before you came upon the stand, that in this interview with M'r D. he stated his views of the matters in dispute between himself and his mother; also her views respecting the same matters; and having heard these statements, you became satisfied that M'r Devereux took a right view of the matters?

Ans. I did; that is what I meant when I said, in my examination to-day, "after careful examination."

365 Quere. How long a time were you with M'r's D. upon the occa

sion above referred to, consulting with her regarding the settlement with T. P. D., esq'r?

Ans. I think it was not over 10 minutes before she told me to make the settlement.

Quere. Did you detail to her, at length, the reasons upon which you based your conclusion that T. P. D. was correct in his views?

Ans. I did not.

Quere. Was the agreement which was finally entered into between the parties, in accordance with the views expressed by T. P. D., in his interview with you, before you saw M'r's D.? [(Here the defendants interposed, and asked the following question:) Quere. Was the agreement referred to in above quere by Col. Haywood ever reduced to writing?

Answer. It was.

The above question by complainant and the answer thereto are objected to by defendants, because it is an indirect mode of arriving at the contents of the agreement, without producing the writing itself.]

Answer. It was in accordance with the wishes of M'r D., as expressed after our examination of the matters in the interview with him, before I saw M'r's Devereux. I mean, that although there might have been some slight difference of opinion between M'r Devereux and myself at first, he was satisfied with the arrangement as finally made. In fact, it was his wishes, though there were some little differences, which he finally gave in to.

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Quere. What evidence, if any, was submitted to you by M'r D., upon which you made up your judgment—or did you rely mainly upon his statements, in reference to the matters in dispute?

Ans. I relied entirely upon his statements.

Quere. Was the agreement, of which you have spoken, between M'r's T. D. and T. P. D., reduced to writing, and signed by them in your presence? If yes, do you know what has become of the written paper, and where did you last see it?

Ans. It was reduced to writing. I do not know what has become of the same, and do not know when I last saw it.

Quere. Did you preserve a copy of it, and can you produce it if required?

Ans. I did preserve a copy, but it has passed out of my possession. I gave it or handed it to M'r S. A. Ashe, who now has it.

(This copy is marked "D O," and filed by defendants.)

Quere. When you spoke, in your examination-in-chief, of accounts between M'r and M'r's D., which you had some faint impression you might have seen, can you say whether such accounts embraced matters before the power of attorney was executed by M'r's D. to you, or after that time?

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Ans. My impression is that they referred entirely to matters after my becoming her attorney.

Re-examined by defendant:

Quere. You stated, M'r Cooke, that you relied entirely upon the statements made to you by M'r D. Were those statements statements of fact, or were they reasons given by M'r D., satisfactory to you, in support of his view of the questions in dispute between him and his mother?

Ans. They were both.

Quere. Did he present to you any evidence other than his own declaration of the statements of fact so made by him?

Ans. I cannot say that he did not show me accounts, but my recollection is indefinite.

W'M D. COOKE.

Sworn and subscribed before me this 22nd day of October, 1873.
E. F. PAGE, *Commissioner.*

Depositions of J. N. Bunting, with report of commissioner.

Examination of J. N. Bunting, for defendants.

J. N. BUNTING, being duly sworn, deposed as follows:

Q. Do you know anything of the original account between Thomas P. and J. Devereux, executors of the estate of John Devereux, senior, deceased, with the estate?

Ans. I do not.

Q. Have you looked for the same?

368 Ans. I have made diligent search for the same this afternoon, wherever I though' the same could be found, but was unable to find it among the records of my office. I am clerk of the superior court of Wake County.

J. N. BUNTING.

Sworn and subscribed before me this 20th day of October, 1873.

Exhibit A A with report of commissioner.

Award of Simmons J. Baker and S. W. Whiting in certain matters of account between M'r's Frances Devereux and Thomas P. Devereux, which were referred to them by the parties.

In the matter of the charge of $559.42 charged M'r's D., on the October, 1839, as being a payment of the balance due on George Devereux's bond to Colin M. Clarke, after the payment of six thousand dollars, as directed by the deed of settlement. We award and decide that M'r's Devereux should not be charged with this amount, because we think the appropriation for the benefit of George Devereux's family was not intended to exceed fifty thousand dollars, including the amount paid Colin M. Clarke, and that, therefore, the balance of the note to him, after paying the six thousand dollars, was properly due from the estate of George Devereux, and because, if the balance was not paid by the estate of George Devereux, we see no reason for charging M'r's Devereux with the amount, unless she voluntarily assumed the pay-

369 ment of it, of which we had no positive evidence.

In the matter of the grave-yard enclosure, charged on the first (1st) of November, 1840,) $333) three hundred and thirty-three dollars, we award and decide that M'r's Devereux should be charged with only one-half this sum, and that the other half should be charged to the estate of her husband, John Devereux, because his body is buried there, and he was equally interested in securing a proper place for the interment of their family, and because M'r's D. will be liable to a further charge of one-fourth the amount charged to the estate of her husband, which will make the amount of her contribution something more than two hundred dollars, which we think her full proportion.

In the matter of M'r Pollok's monument, charged on the 16th October, 1843, $992, we award and decide that the charge is just and proper, because it appears to us from the evidence that M'r's Devereux agreed with M'r Stronack, the builder, to do the work, if, upon advising with M'r T. P. Devereux, the terms offered should be thought fair; from which it appears that she then considered it a matter of her own, and, secondly, because, while the other parties, who were interested as heirs

of M'r Pollok, or received portions of his property, under the deed
370 of settlement, may in duty and equity be equally bound to share the expense with M'r's Devereux, they cannot be charged with any portion of the same, without their assent, which has never been obtained, nor has any evidence been offered to show that any attempt was made to procure it, before incurring the expense.

Witness our hands and seals this 29th July, 1847.

S. J. BAKER. [SEAL.]
S. W. WHITING. [SEAL.]

Exhibit E E with report of commissioner.

Statement of M'r's Frances Devereux's account up to the 22nd June 1846. Amount, $29,664^{60}$. Signed by M'r's Devereux.

Seymour W. Whiting has gone over and examined the accounts between Frances Devereux and Thomas P. Devereux, and after taking from the accounts of the said Thomas, heretofore rendered the said Frances, the sum of five hundred and twenty-five dollars ($525), with the interest thereon, heretofore charged to the said Frances by the said Thomas, as one-half of the annuity to Miss Elizabeth Reeve, the balance ascertained by him to be due the said Frances by the said Thomas is the sum of twenty-nine thousand six hundred and sixty-four dollars sixty cents ($29,664\frac{60}{100}$), which sum is due on and bears interest from the 22nd of June, 1846, and the said sum is hereby agreed to be correct, subject, nevertheless, to the following objections by the said Frances, viz:

371 1st. The sum charged in the said account is an annuity to Miss Ogden, amounting to the sum of three hundred dollars per annum, and it is agreed that the justice and propriety of the said charge be referred to the arbitrament of the Right Reverend Leonidas Polk. If he decides the same to be correct, then, in respect to the said objection, the said account is to stand. If he decides that the said charges are not correct, then the said account is to be altered in that respect, and the said balance increased by the principal and interest of the said sums so charged.

2nd. By the sum of five hundred and fifty-nine dollars ninety-two cents ($559\frac{92}{100}$) to Colin M. Clarke for the balance of the debt of George P. Devereux, which does not appear separately in the said account drawn off by the said Whiting, but which the said Thomas admits to be a part of the first item ($4,099\frac{45}{100}$) in the same, and which was charged to the said Frances some time in the month of October or November, 1849.

3rd. The charge to the said Frances of three hundred and thirty-three dollars ($333\frac{00}{100}$) on the first day of November, A. D. 1840, for the graveyard.

4th. The charge of nine hundred and ninety-two dollars ($992) for the cost of a monument, charged to the said Frances on the 16th of October, 1843.

372 These three last items, both as to their propriety and the proper amounts, if proper, the said Frances and Thomas have agreed to refer to the arbitrament of Doctor Strumans J. Baker and Seymour W. Whiting, and the said account is either to stand or be corrected according to their award. Subject to these exceptions, the said account is signed, and agreed to be correct, October 30th, 1846.

FRANCES DEVEREUX.

Exhibit BB with report of commissioner.

Account stated by W. D. Cooke.

1846.					
June 23	To cash			$2 98	$50 00
" 24	" "	Miss Parmelee		5 95	100 00
" 30	" "			16 67	285 00
July 6	" "			9 77	170 00
" 10	" "			2 85	50 00
" 13	" "	M. B. Royster		49 96	887 14
" 17	" "			5 90	106 00
" 25	" "			2 82	52 30
Aug. 1	" "			80	15 00
" "	" "	Bill on New York		8 00	150 00
" 6	" "			1 68	32 00
" 24	" "			79	16 00
Sept. 2	" "	Taxes		77	16 20
" 4	" "			52	10 00
" 8	" "			1 41	30 00
" 14	" "			68	15 00
" 22	" "			2 25	50 00
373					
1846.					
Sept. 23	To cash			$62	$12 50
" 29	" "			65	15 00
Oct. 7	" "			62	15 00
" 15	" "	W. Stronach		21 15	516 25
" "	" "	W'm D. Cooke		2 05	50 00
" "	" "			61	15 00
" 19	" "	W'm Peace		30 12	747 13
" 29	" "	W'm D. Cooke		1 93	50 00
Nov. 17	" "	" " "		1 78	50 00
" 28	" "	" " "		5 07	150 00
Dec. 7	" "	" " "		3 23	100 00
" 18	" "	" " "		1 52	50 00
" 26	" "	" " "		4 37	150 00
1847.					
Feb'y 1	" "	Bill on New York		3 50	150 00
" 4	" "	W'm D. Cooke		12 10	530 00
" 19	" "	" " "		3 05	150 00
Mar. 13	" "	" " "		1 63	100 00
" 22	" "	" " "		2 25	150 00
Ap'l 12	" "	" " "		3 16	275 00
" 24	" "	" " "		23	25 00
" 30	" "	" " "		85	100 00
May 21	" "	" " "		50	100 00
" 22	" "	" " "		1 15	231 15
" 25	" "	" " "		86	200 00
June 7	" "	W'm Peace		1 91	820 30
" 8	" "	C. A. Edmonston		2 40	30 00
	" "	Miss O. (omitted Aug. 15th, 1846)		7 65	150 00
" 8	" "	W. D. Cooke		6 43	200 00
" 21	" "	To Miss O. (omitted Feb. 15th, 1847)		3 15	150 00
" "	" "	¼ bal. due by the estate of John Devereux, dec'd. to his executors		$159 95	$1,772 65
374	June 21	To ¼ of stock, &c., valued by G. W. Mordecai		262 16	1,684 96
	To balance				22,620 19
					33,394 77
1846.					
June 21	By balance due to date			$1,779 88	$29,664 06

Exhibit B B—Continued.

1847.	Am't brought forward	1,779 88	29,664 60
June 21	By am't due for crop of 1845	135 30	2,256 74
" "	" " " " " " 1846		120 95
" "	" " " on account of estate of J. Devereux, dec'd		91 75
	" balance of interest account		1,260 73
			$33,394 77
1847.			
June 21	By balance due		22,620 19
" "	" this am't charged as paid to C. M. Clark, with int. to date		874 80
" "	" this am't balance due M'r's D. on account of burying-ground, less ¼ for J. D. estate		200 25
" "	" order on J. Devereux, to be paid out of crop of 1847		1,341 73
	Balance due June 21st, 1847		$25,036 97

E E. Correct.

W'M D. COOKE.

It is understood that the signing of the above account is not to bar M'r's Devereux from having a reconsideration of the matters referred to D'r Baker and M'r Whiting as arbitrators, provided she is otherwise entitled to it.

375 *Exhibit DD, with report of commissioner.*

Memorandum of agreement between T. P. Devereux and Frances Devereux, November 8th, 1847.

Memorandum of agreement between T. P. Devereux and Frances Devereux in the settlement of the following matters:

1st. In the account rendered by T. P. D. against M'r's D., the item of interest on the $4,000 agreed to be paid by M'r's D. to T. P. D., for the loss of the Trent land, shall be stricken out from the face of the account, and T. P. D. shall restore to M'r's D. in repayment of said interest (which he has collected) her order on John Devereux for $1,341.73, bearing interest from 21st June, 1847.

2nd. It is agreed that T. P. D. shall strike out of his account current against his mother the annual charge of $300, for Miss Ogden, M'r's D. to lose the interest on said advances.

3rd. It is agreed that T. P. D. shall pay over to M'r's D. the sum of $496, it being one-half of the sum with which M'r's D. has been charged for the monument erected over the body of M'r Pollock.

4th. It is agreed that of the amount charged against M'r's D. in the aforesaid account of $333.00 (it being ⅓ of the whole cost of the iron railing around the burial-ground of the family) M'r's D. shall pay all but $200.25, without counting interest.

Raleigh, November 8th, 1847.

(S'gn') T. P. DEVEREUX.

(S'gn') FRANCES DEVEREUX.

376 *Exhibit E E, with report of commissioner.*

Power of attorney from Frances Devereux to W'm D. Cooke, 13th February, A. D. 1847.

Know all men by these presents that I, Frances Devereux, of the city of Raleigh, in the State of North Carolina, do hereby constitute and appoint William D. Cooke, of the city of Raleigh, and State of North Carolina, to be my true, sufficient, and lawful attorney, for me, and in my name, and for my use, to attend to all my temporal affairs, such as the collection and payment of debts, &c., &c.

And for the purposes aforesaid, I do hereby grant unto my said attorney full power to execute and deliver all needful instruments and papers whatever, under seal or otherwise; to institute and prosecute to final judgement and execution all process in law or in equity; to defend any & all suits against me, the constituent; to submit any & all matters in dispute to arbitration or reference, or the same to settle and compromise; to appoint one or more substitutes under him, & the same to discharge at his pleasure, and generally to do and perform all such acts, matters, and things as my said attorney shall deem necessary or expedient for the complete and effectual execution of the authority hereinbefore granted, as fully as I might & could do if I were personally present, I hereby ratifying and confirming all the acts of my said attorney, or of his substitutes, done by virtue and in pursuance of these presents.

In testimony whereof I have hereunto set my hand and seal the 13th day of February, A. D. 1847.

FRANCES DEVEREUX. [SEAL.]

Signed, sealed, and delivered in presence of—
LOUIS DU PRE.

377 *L L.—T. P. Devereux's statement of his account with M'r's F. Devereux, referred to in report of commissioner.*

Account of receipts and disbursements of T. P. Devereaux, as rendered by his assignees before M'r Commisioner Page.

M'r's Frances Devereux, in a/c with Thomas P. Devereux, trustee.

1846.			D'R	C'R
June	22	By am't due this day, as per statement made by S. W. Whiting and agreed to by her		29,664 60
		" interest to June 22nd, 1847		1,779 90
		" am't rec'd from J. Devereux on your a/c being proceeds of crop of 1845, int. 1 year.		2,256 74
		" am't rec'd from same for crop of 1846		135 30
		" " due you on account of estate of J. D., dec'd		120 95
				91 75
"	23	To cash $50; interest $2.98	52 98	
"	24	" Miss Parmalee $100; int. $5.95	105 95	
"	30	" cash $285; interest $16.17	301 67	
July	6	" cash $170; interest $9.77	179 77	
"	10	" cash $50; interest $2.85	52 85	
"	13	" M. B. Royster's note $887.14; int. $49.96	937 10	
"	17	" cash $106; interest $5.90	111 90	
"	25	" cash $52.30; interest $2.82	55 12	
Aug.	1	" cash $15; interest .80	15 80	
"	"	" bill on N. Y., Miss Ogden $150; int. $8	158 00	
"	5	" cash $32; interest $1.68	33 68	
"	21	" cash $16; interest .79	16 79	

M'r's Frances Devereux, in account, &c.—Continued.

1846.				
Sept.	2	To cash for taxes $16.20; interest .79	16 97	
"	4	" cash $10; interest .52	10 52	
"	8	" cash $30; interest $1.41	31 41	
"	14	" cash $15; interest .68	15 68	
"	22	" cash $50; interest $2.25	52 25	
"	23	" cash for corn $25; interest $1.24	26 24	
"	29	" cash $15; interest .65	15 65	
Oct.	7	" cash $15; interest .62	15 62	
"	13	" W'm Stronach $516.25; int. $21.41	537 66	
"	15	" W. D. Cooke $50; int. $2.05	52 05	
"	"	" cash $30; interest $1.22	31 22	
"	19	" W'm Peace $747.13; int. $30.12	777 25	
		Amounts over	$3,304 13	$34,049 24
378				
			D'R	C'R
1846.		Amounts brought over	$3,304 13	$34,049 24
Oct.	29	To cash to W. D. Cooke $50; interest $1.93	51 93	
Nov.	17	" " " " " " $50; " 1.78	51 78	
"	28	" " " " " " 150; " 5.07	155 07	
Dec.	7	" " " " " " 100; " 3.23	103 23	
"	18	" " " " " " 50; " 1.52	51 52	
"	26	" " " " " " 150; " 4.37	154 37	
1847.				
Feb'y	1	" Miss Ogden's annuity $150; " 3.50	153 50	
"	4	" cash to W. D. Cooke & to self $530; " 12.10	542 10	
"	19	" cash to W. D. Cooke $150; " 3.05	153 05	
Mar.	10	" " " " " " 100; " 1.63	101 63	
"	22	" " " " " " 150; " 2.25	152 25	
Apr.	12	" " " " " " 275; " 3.16	278 16	
"	24	" " " " " " 25; " .23	25 23	
"	30	" " " " " " 100; " .85	100 85	
May	21	" " " " " " 100; " .50	100 50	
"	22	" " " " " " 231.15; " 1.15	232 30	
"	25	" " " " " " 200; " .86	200 86	
July	7	" M'r's F. A. Polk, in N. Y. 225; " .52	225 52	
"	"	" W'm Peace's notes 1,545; " 31.62	1,576 62	
"	8	" W. D. Cooke, cash 200; " .43	200 43	
"	21	" cash to M'r's C. A. Edmonston, 30, paid Feb'y 15th, 1846; int. 16—— 2.40	32 40	
"	21	" your ½ balance due the ex't'rs of John Devereux, dec'd $1,772.65; int. from Jan. 1st, '46, com'd 159.95	1,932 60	
		" your ½ of stock, valued by G. W. Mordecai, $1,684.19; int. from Jan. 1845, comp'd, $262.16	1,946 35	
"	"	By deductions from cost of grave-yard as awarded by Messrs. Baker & Whiting $125		
		" int. from 29th Sept., 1839, comp'd, 68.41		193 41
		" cash charged you as paid C. M. Clark, as per award of Mess. Baker & Whiting, $559.42; int. from Sept. 29th, 1839, comp'd, 307.12		866 12
		Balance carried over, due June 22nd, 1847.	23,282 39	
			$35,108 77	$35,108 77
379				
			D'R	C'R
1847.		Amount brought over		$23,282 39
June	22			
July	1	To balance due W'm Peace $11.33; int. .66, von. Jan'y 7	$ 11 99	
Sept.	2	" L. Hinton's note $522.80; interest $25.25	548 05	
July	26	" cash to W. D. Cooke $100; interest $5.48	105 48	

M'r's Frances Devereux, in account, &c.—Continued.

1847.							
Aug.	12	To cash to W. D. Cooke,	50;	interest	2.53....	52 53	
"	17	" " " " " "	75;	"	3.81....	78 81	
"	28	" " " " " "	50;	"	2.45....	52 45	
Sept.	2	" " " " " "	200;	"	9.66....	209 66	
"	10	" 2 cheeses in N. Y.	8 33;	"	.37....	8 70	
Oct.	5	" cash to W. D. Cooke,	75;	"	3.21....	78 21	
"	11	" " " " " "	100;	"	4.19....	104 19	
"	23	" " " " " "	75;	"	3.00....	78 00	
"	26	" " " " " "	175;	"	6.20....	181 20	
Nov.	9	" cash	100;	"	4.70....	104 70	
"	12	" cash to W. H. Haywood, j'r,	200;	"	7.33....	207 33	
"	13	" Geo. Sanders' note,	213.33;	"	7.78....	221 11	
"	13	" James D. Nunn's note,	1,071.27;	"	39.09....	1,110 36	
"	20	" cash to W. D. Cooke,	60;	"	2.10....	62 10	
"	23	" " " " " "	50;	"	1.73....	51 73	
"	14	" E. Colburn	13.33;	"	.40....	13 73	
"	29	" cash to W. D. Cooke,	115;	"	3.86....	118 86	
Dec.	24	" " " " " "	150;	"	4.45....	154 45	
"	29	" " " " " "	150;	"	4.34....	154 34	
1848.							
Jan'y	3	" " " " " "	200;	"	5.60....	205 60	
"	11	" " " " " "	100;	"	2.66....	102 66	
"	15	" cash to M'r's Fuller,	50;	"	1.30....	51 30	
"	25	" " " W. D. Cooke,	100;	"	2.43....	102 43	
"	28	" " " " " "	50;	"	1.20....	51 20	
Feb'y	1	" " " " " "	40;	"	.93....	40 93	
"	5	" " " " " "	50;	"	1.12....	51 12	
"	11	" " " " " "	75;	"	1.62....	76 62	
"	14	" " " " " "	40;	"	.84....	40 84	
"	22	" " " " " "	150;	"	2.97....	152 97	
"	26	" " " " " "	50;	"	.95....	50 95	
		Amounts forward.....				$4,634 60	$23,282 39

						D'R.	C'R.
1848.		Amounts forward.....				$4,634 60	$23,282 39
Mar.	15	To cash W. D. Cooke, $100;	interest, $1.60....			101 60	
"	18	" " " " "	200;	"	3.10....	203 10	
"	20	" " " " "	200;	"	3.03....	203 03	
"	22	" " " " "	202.50;	"	3.03....	205 53	
"	27	" " " " "	100;	"	1.40....	101 40	
Apr.	1	" " " " "	50;	"	.67....	50 67	
"	17	" " " " "	125;	"	1.33....	126 33	
"	27	" " " " "	500;	"	5.00....	505 00	
"	26	" " " " "	150;	"	1.37....	151 37	
May	1	" " " " "	450;	"	3.82....	453 82	
"	13	" " " " "	150;	"	.92....	150 92	
June	10	" M'r Cassady,	100;	"	.18....	100 18	
"	20	" D. L. Swain for taxes				4 60	
"	22	By interest on $23.282.39 one year.....					1,396 92
		Balance carried over.....				17,687 16	
						$24,679 31	$24,679 31

M'r's Frances Devereux, in account, &c.—Continued.

1847.					
Aug.	15	To cash paid Miss Ogden....	$150		
		" int. 10 months 6 days....	7 65		
				$157 65	
1848.					
Feb'y	15	" cash paid Miss Ogden....	$150		
		" int. 4 months 6 days.....	3 15		
				$153 15	
				$310 80	
		True balance, deducting omitted items			$17,376 36

381 *M'r's Frances Devereux in ⅜ with Thomas P. Devereux, trustee.*

1848.			D'R.	C'R.
June	22	By balance due this day.....	.....	$17,376 36
		" interest one year.....	.....	1,042 58
		To cash to M'r's Fuller, Jan'y, 1847, $50; int. $4.42	54 42	
		" " " W. D. Cooke, June 21st, 1848, $150; int. $9.00.....	159 00	
July	5	" " " M'r's Fuller, $15; int. $ .85.....	15 85	
"	10	" " " " Lacy, 75; " 3.73.....	78 73	
"	13	" " " " Fuller, 15; " .84.....	15 84	
"	13	" " for meal, 6; " .33.....	6 33	
"	15	" " to W. D. Cooke, $177.73; int. $9.95....	187 68	
"	21	" " Terrell, Johnson & Terrel, $12.28; int. .66.	12 94	
"	31	" " to M'r's Fuller, 30; int. 1.60.....	31 60	
Aug.	2	" " " W. D. Cooke, 5; " .26.....	5 26	
"	7	" " " M'r's Fuller, 50; " 2.63.....	52 63	
"	15	" " Miss Ogden, 150; " 7.65.....	157 65	
"	21	" " M'r's Fuller, 25; " 1.25.....	26 25	
"	28	" " W. D. Haywood, 9.50; " .46.....	9 96	
Sept.	1	" " M'r's Fuller, 25.00; " 1.20.....	26 20	
"	7	" " J. Primrose, 158.38; " 7.37.....	165 75	
"	15	" " for books E. P. Jones, $1.75: int. .07..	1 82	
"	15	" " M'r's Fuller, 25; int. $1.14.....	26 14	
"	"	" " groceries in N. Y., $67.29.....		
"	"	" " Miss Maitland, for books, 4.00—$71.29; int. 3.26.	74 55	
Oct.	1	" " M'r's Fuller, $ 25; int. $1.08.....	26 08	
"	3	" " F. H. Briggs, 137.75; " 5.89.....	143 64	
"	9	" " chairs for cleaning well, 2.00; int. .08..	2 08	
"	9	" " Waltering's bill, $12.89; int. .54.....	13 43	
"	17	" " bill on N. Y. (S. M. Chester), $11.00; int. .45.	11 45	
"	17	" " J. M. Towles, 25.00; int. 1.03.....	26 03	
"	7	" " M'r Lacy, 50.00; " 2.11.....	52 11	
"	16	" " M'r's Fuller, 80; " 3.40.....	83 40	
		Amounts forward.....	$1,466 82	$18,418 94

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1848.						D'R.	C'R.
		Amounts over.....				$1,466 82	$18,418 94
Oct.	17	To cash to M'r's Fuller,		$25;	int. $1.01..	26 01	
Nov.	13	" " " " "		50;	" 1.81..	51 81	
Dec.	1	" " " " "		50;	" 1.66..	51 66	
"	15	" " " " "		50;	" 1.55..	51 55	

M'r's Francis Devereux, in account, &c.—Continued.

1849.								
Jan'y	1	To cash to M'r's Fuller,	50;	int.	1.41..	51 41		
"	15	" " " " "	50;	"	1.30..	51 30		
"	25	" " " " "	80;	"	1.94..	81 94		
"	"	" " taxes,	13.36;	"	.31..	13 67		
"	26	" " Brown & Hinton,	32.06;	"	.77..	32 83		
"	"	" " J. M. Towles,	50.68;	"	1.20..	51 88		
"	27	" " Jesse Brown,	24.54;	"	.57..	25 11		
"	30	" " M'r's Fuller,	50;	"	1.17..	51 17		
Feb'y	15	" " " "	50;	"	1.05..	51 05		
"	"	" " Miss Ogden,	150;	"	3.15..	153 15		
Mar.	1	" " M'r's Fuller,	50;	"	.91..	50 91		
"	15	" " " "	50;	"	.80..	50 80		
"	10	" " box of wine,	25;	"	.40..	25 40		
"	19	" " G. W. Mordecai,	400;	"	7.32..	407 32		
"	30	" M'r's Fuller,	50;	"	.66..	50 66		
Apr.	7	" " C. T. Haigh & Son,	24.47;	"	.29..	24 76		
"	9	" " M'r Lacy,	50;	"	.60..	50 60		
"	15	" " M'r's Fuller	50;	"	.55..	50 55		
"	25	" " E. Colburn,	84;	"	.78..	84 78		
May	1	" " M'r's Fuller,	50;	"	.42..	50 42		
"	15	" " " "	50;	"	.30..	50 30		
June	21	" interest paid E. Colburn.....,				9 25		
		Balance due by T. P. Devereux June 22nd, 1849.				15,301 83		
						$18,418 94		$18,418 94

383 *H. H.—Statement of account with Mrs. F. Devereux, by S. W. Whiting, adm'r. Referred to in report of Commissioner.*

Account of receipts & disbursements of S. W. Whiting, adm'r, as rendered by assignees in bankruptcy of T. P. Devereux, before M'r Commissioner Page.

Estate of M'r's Frances Devereux in a/c with S. W. Whiting, administrator.

1849.			Dr.	Cr.
June	22	By amount due from T. P. Devereux.....		$15,301 83
		" interest one year.....		918 10
		" amount rec'd from J. Devereux crop of 1848....		1,139 00
		" interest 1 year.....		68 34
		To am't of legacy left T. P. D. in trust, $7,500, int. $450.....	7,950 00	
		" " " " " Ral. Ben't Soc'y $500 " $30.....	530 00	
		" " " " " Rob't Souter, 500, " 30	530 00	
"	18	" " E. Card, $2.50, interest, .15.....	2 65	
"	28	" " Mr's Fuller, 65.00, " $3.65.....	68 65	
July	7	" " Ben'j Perry, 34.60, " 1.98.....	36 58	
Aug.	15	" " E. Colburn, 200.00, " 10.26.....	210 26	
"	29	" " W. Thompson, 35.35, " 1.90.....	37 25	
"	27	" " John King, 10.00, " .54.....	10 54	
"	30	" " W'm Thompson. 7.50, " .40.....	7 90	
Sept.	1	By sale of horses, 45.00, " 2.08.....		47 08
"	"	To cash paid J Woltering, 12.89, " .65.....	13 54	
"	3	" " " J. Primrose, 82.78, " 4.38.....	87 16	
"	8	" " " Jesse Brown, 17.36, " 90.....	18 26	
Oct.	8	" " " H. J. Patterson, 25.00 " 1.07.....	26 07	
"	13	" " " J. Woltering, 26.27 " 1.08.....	27 35	

Estate of M'r's Frances Dererveux in account, &c.—Continued.

1850.			
Jan'y 1	By rent of land, & sale of stock, 2,840.78, " 81.39		2,922 17
" 5	To cash paid K. Jones, $40.32, " 1.12	41 44	
" 8	" " " E. Smith, 14.89, " .39	15 28	
" 11	" " " J. M. Towles, 34.05, " .92	34 97	
" 12	" " " W. Strarach, 181.81, " 3.93	185 74	
" 28	" " " J. R. Harrison, 4.50, " .10	4 60	
" 24	" " " Haywood & Williams, $54.32, int. 1.33	55 65	
" 29	" " " Peebles, White & Davis, 1.81, " .04	1 85	
" 31	" " " pastor's salary, 50.00, " 1.19	51 19	
Feb'y 14	" " " Crocker & Dudley, 2.50, " .05	2 55	
Mar. 1	" " " W. J. Clark, 33.57, " .62	34 19	
1849.			
Sept. 1st	" " " copying will, 25.00, " 1.29	26 29	
	Balance forward	10,396 56	
		20,396 52	20,396 52

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		Dr.	Cr.
1850.			
June 22	By balance forward, $10,396.56, int. 623.29		11,009 85
"	To am't paid Caldwell Institute, legacy Jan'y 1st, 1850, and omitted, $4,000, int. 5 M. 22d, 126.66	4,126 66	
Aug. 1st	To cash paid Mr's Hall, $2.00, int. .10	2 10	
Sept. 28	" " " board of education legacy,	4,000 00	
	Int. to June 22nd, 1851	196 00	
Oct. 1st	" " Board Home Missions	4,000 00	
	Interest	194 66	
Dec. 24	" " J. McKimmon, $18.01, int. .54	18 55	
1851.			
Jan'y 1st	By hire of Delia, $13, int. .36		13 36
" "	" " negroes, 83.75, " 2.30		86 05
" "	" " " Tom and Viney, $70, int. 2.10		72 10
" 23	To cash paid Bennett T. Blake, $10, int. 25	10 25	
Feb'y 10	" " " W. Putney, taxes 17.28, " .37	17 65	
" 25	" " " Williams and Haywood, 2.75, " .10	2 85	
June 21	" " " taxes	8 10	
	To balance debit of estate		1,395 46
		$12,586 82	$12,586 82
1851.			
June 22	To balance forward	1,395 46	
	Interest 1 year	83 70	
Nov. 4	To cash paid legacy, Board Foreign Missions	4,000 00	
	Int. to June 22, 1852, 7 mos., 18 d'ys	152 00	
Aug. 1	To cash paid D'r Johnston, $15, int. .76	15 76	
" 15	" " " " Haywood, 617.00, " 31.55	648 55	
" "	" " " E. Colburn's note, 522.50, " 25.64	548 14	
" "	" " " W'm Murdock's " 522.50 " 25.64	548 14	
" "	" " " " " " 522.50, " 25.64	548 14	
" "	" " " Mary R. Wheaton, 303.36, " 15.41	318 77	
1852.			
Jan'y 1	By hire of Delia, $25, Betsey, $25, Tom and Viney $80; negroes to J. Devereux, $150—280, int. $8.02		288 02
	Balance to Debit		7,970 74
		$8,258 76	$8,258 76

Estate of M'r's Frances Devereux in account, &c.—Continued.

385		Dr.	Cr.
1852.			
June 22	To balance to debit, $7,970.74, int. 1 y'r $478.24...	8,448 98	
1853.			
Jan'y 1	" support of negroes, 97.00, " 2.77.....	99 77	
" "	By hire of Delia, $27, Tom & Viney, $75, negroes to J. Devereux, $150=$252, int. $7.22.....		259 22
Feb'y 23	To cash paid R. P. Finch, $88.13, int. .16	88 29	
April 28	" " " Haywood & Williams, 2.50, " .03....	2 53	
June 22	" " " Adam, sundries, $44.92.....	44 92	
" "	" " " W. J. Clark	84 38	
" "	" " " church in Pittsboro	25 00	
" "	" " " Tom March.....	30 00	
" "	" " " Patsey Simpson	12 00	
" "	" " " sh'ff of Wake, taxes for 1848.....	13 36	
" "	" " " Martha Simpson.....	11 73	
" "	" " " E. Colburn for interest.....	67 40	
" "	" " " sh'ff Bertie, taxes for 1849.....	129 52	
" "	" " " support woman & child'n, 2 y'rs	180 00	
" "	" " " M'rs Wheaton, interest.....	46 56	
	Balance to debit, June 23rd, 1853.....		9,025 22
		$9,284 44	$9,284 44
Dec. 24th	1858, T. P. Devereux paid the Union Theological Seminary, their legacy	$4,000 00	
	Balance to debit as above	9,284 44	
	Amount paid over and above assets.....	$13,284 44	

Exhibit F F with report of Commissioner.

Account current of Thomas P. and John Devereux, j'r, executors of John Devereux, s'r, deceased.

1844.				*Int.*	*Prin.*
July	1	To cash,	W'm Smith	$ 09	$ 1 00
"	6	" "	W'm Thompson	7 67	86 00
"	15	" "	J. Primrose	4 26	48 71
"	19	" "	J. M. Towles	1 62	18 75
"	26	" "	Brown & Hinton	3 27	38 20
"	"	" "	Williams & Haywood	2 65	30 95
"	27	" "	J. McKimmon	28	3 40
"	29	" "	W'm Holeman	62	5 00
Aug.	12	" "	T. Y. Scott	61	7 00
"	"	" "	Smith & Buffaloe	66	7 93
"	23	" "	R. R. Smith	75	9 23
"	24	" "	W. S. Whitaker	9 74	120 00
"	26	" "	County taxes	87	10 85
"	28	" "	J. D. Newsom	63	7 86
Sep.	1	" "	W. W. Clark	9 37	120 66
"	23	" "	C. R. Root	82	10 75
"	26	" "	Bertie taxes	13 60	177 50
Nov.	4	" "	Blankets (P. & M.)	13 09	191 34
Dec.	20	" "	A. Bishop	24	4 00
"	20	" "	Bagging (R. & M.)	15 09	243 26
"	21	" "	J. L. & R. W. Hyman	3 95	64 16
1845.					
Jan'y	1	" "	Ditto	3 25	53 90
"	"	" "	Eli-ha Ryan	27 19	453 28
"	"	" "	John Gammon	14 67	247 90
"	28	" "	Asa Jones	77	14 00
Feb'y	16	" "	A. Craig	4 57	88 00
Mar.	7	" "	Yates & Sutton	1 17	24 00
"	1	" "	Ryan & Maitland	15 39	319 65
"	11	" "	Grimes & Son	28	5 81
May	20	" "	Willis Smith	38	8 00
"	28	" "	J. Waddel	33	9 05
June	4				
387					
		" "	W. R. Clark	2 96	61 27
"	"	" "	Silas Burns	52	15 17
"	25	" "	D'r Cobb	16	4 75
July	14	" "	C. W. D. Hutchins	83	26 95
"	31	" "	Lewis Thompson	4 23	139 60
Aug.	6	" "	Stith & Pescud	12	5 00
Sep.	15	" "	Turner & Hughes	45	18 89
"	20	" "	McFarland & Co	3 53	201 67
"	29	" "	Ja's Gomant & Co	30 20	1,812 37
Oct.	"	" "	Bertie taxes	2 54	169 15

1844.		*Int.*	*Prin.*
Nov. 25	By sales land in Tennessee	79 43	1,206 63
	By stock of tools, &c., p'r M. Mordecai's valuation	303 29	5,054 88
	Sales of corn in N. Y	23 75	471 86
12	do do	54 40	1,129 46
18	Old horses	2 45	52 00
	Cotton in New York	167 70	3,699 43
April 8	Corn in New York	28 00	641 35
June 11	" Charleston	35 35	1,065 78
July 26	Land in Tennessee	7 73	300 00
May 21	Corn in Chatham	30 08	1,378 10
Sep. 12	Corn Charleston	38 52	2,139 80
" 18	" "	18 22	1,072 45
" 28	Bacon, Norfolk	4 26	207 70
	Amount due estate by T. P. Devereux		7,056 59
		$793 19	$25,476 07

D'R. *The estate of John Devereux, dec'd, in account with Thomas P. and J. Devereux, executors.* C'R.

1845.							
Oct. 29	To cash, Sundry debts p'd by P. D.		19 70				
Nov. 30	" " Wake taxes, 1844		10 85				
1844.	" " Gabiel expenses	3 31	51 00				
			4,991 24				
1845.							
Oct.	To cash p'd J. R. Justice	20 44	2,493 96				
	" " " Ja's Lenox	787 26	9,757 52				
	" " " Estate M. Griffin, p'r statement J. M. Roberts	699 42	11,657 16				
	To cash note & acceptance	} 232 02	2,500 00				
	In Bank of the State	} 1,950 01					
			37,409 88	1846.			
1846. Jan. 1	Balance interest		1,156 82	Jan'y 1	By bal. due exec't'rs		7,090 63
			32,566 70				32,566 70
1846. Jan.	Balance due executors		$7,090 63			16 30	
1836.				1836.		4 00	
July 8	Paid, D'r F. J. Haywood	8 69	152 00	July 26	Cash for land from McClennahan		300 00
Aug. 10	" E. Griffin	1 50	22 00	Aug. 25	do do		400 00
Oct. 24	" T. H. Snow	52	15 64		Bal' due executors		$6,818 84
	Sundry services p'd by me. F. Devereux, 1845.. $9,522						
	Services heretofore charged 1,970	9 16	75 52				
Oct. 13	W. Stronach, tombstone	6 48	157 00				
	To bal. int. account		6 05				
		26 35	7,518 84				
388	To bal. due executors		6,818 84				$7,518 84

W. DEVEREUX,
J. DEVEREUX,
Executors.
AUGUST, 1847.

S. W. WHITING.

Wake County.—August term, 1847.

The foregoing account was, on oath, returned into court and ordered to be recorded.

JAMES T. MARRIOTT, *C. C.*

Wake County, superior court.

I, J. N. Bunting, clerk of the superior court of Wake County, do certify that the foregoing is a true and perfect copy of the account of the estate of John Devereux, deceased, as appears of record in my office, in record book "B. B.," pages "266" and "267."

In witness whereof I have hereunto set my hand, and affixed the seal of my office, at office in Raleigh, this the 29th day of November, 1873.

[SEAL.] J. N. BUNTING, *Clerk.*

389 *Ledger, with report of commissioner.*

Account-book offered in evidence by assignees in bankruptcy of T. P. Devereux.

Frances Devereux in account in with T. P. Devereux.

1840.		Page 18 of ledger:	Dr.	Cr.
April	15th	By amount of charge on the property of T. P. Devereux		$50,000 00
"	"	Interest for one year, ending April 15th, 1841		3,000 00
				53,000 00
"	"	To cash advanced at sundry times, from July, 1839, to April, 1840	$4,099 45	
"	"	To equalized interest, say 18 months	368 19	
July	1st	Cash, $175 00, interest to April 15th, 1841, $7.87	182 87	
"	"	To cash before Uncle P's death	200 00	
"	"	" interest, say two years	24 00	
Oct.	23d	" cash to my father	300 00	
"	"	" interest to April 15th, 1841	9 00	
"	"	" cash, $700, interest as above, $21	721 00	
Nov.	1st	" cash to Miss O. and M'r's R	225 00	
"	"	" interest, as above	5 62	
"	"	" ½ cost of burying-ground	333 00	
"	"	" interest for 1 year, 6 months	29 90	
1841.				
Jan'y		" value of carriage	600 00	
"	"	" interest to April 15th, 1841	9 30	
Febr'y		" cash to M'r's R.	75 00	
"	"	" interest, as above	1 12	
		Total	7,183 45	
		Balance due F. Devereux April 15th, 1841		$45,816 55

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1841.		Page 19 of ledger:	Dr.	Cr.
April	15th	By balance due F. Devereux		$45,816 55
		Interest to April 15th, 1842		2,748 99
				$48,565 54
"	"	To cash for Booker $1,000, in't $60	1,060 00	
May	1st	" cash to Miss O. and M'r's R	225 00	
"	"	" interest to April 15th, 1842	13 50	
"	15th	" cash, by John	150 00	
"	"	" interest, as above	8 25	
Aug.	30th	" cash to you, $200; in't, as above, $7.50	207 50	
Sept.	6th	" cash paid Bank of Cape Fear	501 00	
"	"	" interest, as above	20 00	
Oct.	15th	" cash paid M'r's Sooler for McNeil	350 00	
"	"	" interest, as above	10 50	
"	23d	" cash paid W. F. Clark	318 00	
"	"	" interest, as above	9 50	
Nov.	1st	" cash to Miss O and M'r's R	225 00	
"	"	" interest, as above	5 62	
"	"	" cash paid McNeil	35 00	
"	"	" interest, as above	87	

Frances Devereux in account, &c.—Continued.

1842.				
Mar.	12th	To cash to M'r Witherspoon	765 00	
"	"	" interest, as above	3 82	
April	"	" cash paid you for Miss Willie	300 00	
				$44,356 98
		Total	$4,208 56	
		Balance due F. Devereux April 15th, 1842		
391	1842.	Page 20 of ledger:	Dr.	Cr.
April	15th	By balance brought over		$44,356 98
		In't for one year, to April 15th, 1843		2,661 42
				$47,018 40
"	"	To this sum allowed T. P. D., in consequence of loss of ½ Trent land	$4,000 00	
"	"	" interest thereon compounded from April 15th, 1839—say 4 years. (The interest is compounded because it has heretofore been allowed and paid to M'r's D.)	1,048 82	
"	"	" my bond to M'r's S. E. Devereux, given by your direction	5,000 000	
"	"	" interest from Feb'y 26th, 1842, say one month, nineteen days	20 40	
May	2nd	" ½ annuity to M'r's R	75 00	
"	"	" interest to April 15th, 1843	4 25	
"	30th	" cash to Bank of Cape Fear	78 80	
"	"	" interest, as above	4 15	
Aug.	4th	" cash to Miss O.	150 00	
"	"	" ½ annuity to M'r's R	75 00	
"	"	" cash to M'r's S. E. D. for Miss Willie	50 00	
"	"	" interest, as above, on the three items	11 50	
"	25th	" cash for M'r's Scott	25 00	
"	"	" interest, as above	95	
Sept.	2nd	" cash to M'r's Hooper	100 00	
"	"	" interest, as above	3 60	
"	5th	" cash to White and to Parliment Butts	31 20	
"	"	" interest, as above	1 13	
		Carried over	$10,679 80	
392				
	1842.	Page 21 of ledger:	D'r.	Cr.
		By balance on other side		$47,018 40
		To amount brought forward	$10,679 80	
Oct.	6th	" cash to M'r Nunn, for lumber	170 00	
"	"	" interest as above	5 35	
"	21st	" cash, $50. Int. as above, $1.45	51 45	
"	22nd	" cash in Bank of Cape Fear	228 00	
"	"	" interest as above	6 58	
Nov'r	8th	" cash to M'r's R	75 00	
"	"	" interest as above	2 44	
"	14th	" cash for parsonage	130 00	
"	"	" interest as above	3 25	
Dec.	6th	" cash for parsonage	100 00	
"	"	" interest as above	2 15	
	1843.			
Jan'y	5th	" cash, $100. Interest, $1.88	101 88	
Feb'y	7th	" cash, $100. Interest, $1.12	101 12	
"	22nd	" cash, $150. Interest, $1.28	151 28	
"	"	" cash to Miss O	150 00	
"	"	" interest as above	1 28	
Mar.	9th	" cash to J. Day for locks	79 00	
"	"	" interest as above	45	
		Total	$12,039 03	
		Balance due F. Devereux April 15th, 1843		$34,979 37

Frances Devereux, in account, &c.—Continued.

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1843.		Page 22 of ledger:	D'R.	CR.
April	15th	By balance brought over		$34,979 37
"	"	" interest for one year		2,098 74
July	4	To cash to Williams, for Ham'l	60 00	37,078 11
"	"	" interest, 9 mo's and 12 days	2 82	
"	9	" cash to you	250 00	
"	"	" int., 9 months and 7 days	11 55	
"	25	" cash for parsonage	50 00	
"	"	" int., 8 months 20 days	2 16	
Aug.	1	" cash to Miss O	150 00	
"	"	" int., 8 months 15 days	6 37½	
"	23	" cash to C. H. Johnson	417 75	
"	"	" int., 7 months 23 days	14 12	
"	24	" cash to D. Ruth	79 38	
"	"	" int., 7 months 22 days	2 68	
"	31	" cash to J. Brown, $37.10		
"	"	" do " Towles, 56.00	93 10	
"	"	" int., 7 months 15 days	2 49	
Sept.	2	" cash to Bank of Cape Fear	200 00	
"	"	" int., 7 months 13 days	7 43	
"	11	" cash to yourself	45 00	
"	"	" int., 7 months 4 days	1 60	
Oct.	16	" cash for monument	992 00	
"	"	" int., 6 months	29 76	
"	"	" cash by M'r's D., in New York	39 51	
"	"	" interest, 6 months	1 18	
"	17	" cash to yourself	25 00	
"	"	" int., 6 months	75	
Nov.	20	" cash to yourself	150 00	
"	"	" int., 4 months 26 days	4 30	
		" carried over	$2,638 95½	

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1844.		Page 23 of ledger:	D'R.	CR.
		By balance on other side		$37,078 11
		To amount brought over	$2,638 95½	
Jan'y	1st	" cash to you'self	100 00	
"	"	" int., 3 months 15 days	1 75	
"	30	" cash to you'self	150 00	
"	"	" int. for 2 months 15 days	3 37½	
Feb'y	1st	" cash to Miss O	150 00	
"	"	" int., 2 months 15 days	3 37½	
Mar.	18	" cash to you'self	500 00	
"	"	" int., 28 days	2 37½	
April	15	" your share of fee paid D'r Metaner, Oct. 28th, 1842, and unsettled heretofore	100 00	
"	"	" int., 1 year, 5 months, 17 days	8 75	
		Total	$3,658 58	
		" Balance due F. Devereux April 15th, 1844		$33,419 53

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1844.		Page 26 of ledger:	DR.	CR.
April	15th	By balance brought forward		$33,419 53
"	"	" int. due April 15th, 1845		2,005 17
May	1st	To Ja's H. Selby	$15 75	$35,424 70
"	"	" cash	10 00	
"	"	" int., say 11 months, 15 days	1 48	
"	2	" cash	25 75	
"	"	" int. 11 months, 14 days	1 46	

Frances Devereux, in account, &c.—Continued.

July	6	To cash	40 00	
"	"	" int. 9 months, 10 days	1 86	
"	15	" cash	27 00	
"	"	" int. 9 months	1 21	
"	19	" Richard Smith	26 62	
"	"	" int. 8 months, 25 days	1 16	
Aug.	1	" bill on New York	150 00	
"	"	" int. 8 months, 15 days	6 37	
"	5	" cash	25 00	
"	"	" int. 8 months, 10 days	1 04	
"	"	" sundries	26 56	
"	"	" int. 8 months, 10 days	1 11	
"	24	" John Primrose	23 00	
"	"	" int. 7 months, 21 days	88	
"	26	" bill on New York	120 00	
"	"	" int. 7 months, 19 days	4 67	
"	27	" cash	20 00	
"	"	" int. 7 months, 18 days	72	
Sept.	3rd	" Towles for corn	6 97	
"	"	" int. 7 months, 12 days	25	
"	7th	" E. P. Jones	25 00	
"	"	" int. 7 months, 8 days	90	
			$564 76	

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1844.		Page 27 of ledger:	Dr.	Cr.
		By amount brought over	.....	$35,424 70
		To amount brought forward	$564 76	
Sept.	4	" S. E. Devereux	50 00	
"	"	" int. 7 months, 11 days	1 78	
"	14	" Williams and Haywood	15 50	
"	"	" int. 7 months	54	
"	21	" cash	20 00	
"	"	" int. 6 months	67	
"	25	" Henry (Wages)	12 00	
"	"	" int. 6 months, 20 days	38	
"	30	" cash	25 00	
"	"	" int. 6 months, 15 days	83	
Oct.	3	" cash	20 00	
"	"	" int. 6 months, 12 days	64	
"	10	" cash	10 00	
"	"	" int. 6 months, 5 days	32	
"	12	" S. Mordecai	16 36	
"	"	" int. 6 months, 3 days	50	
"	14	" cash	25 00	
"	"	" int. 6 months, 1 day	75	
"	18	" expenses to Philadelphia	316 70	
"	"	" int. 5 months, 27 days	14 99	
"	19	" cash	50 00	
"	"	" int. 5 months, 26 days	1 47	
Nov.	1st	" John Primrose	36 35	
"	"	" int. 5 months, 15 days	97	
"	20	" cash	200 00	
"	"	" int. 4 months, 25 days	4 84	
			$1,390 35	

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1844.		Page 28 of ledger:	Dr.	Cr.
		By amount brought over	.....	$35,424 70
		To amount brought forward	$1,390 35	
Nov.	21	" cash	26 56	
"	"	" int. 4 months, 24 days	64	
"	23	" James D. Nunn	47 37	
"	"	" int. 4 months, 22 days	1 09	
"	"	" fodder, wood, peas, &c.	61 00	

Frances Devereux, in account, &c.—Continued.

Nov.	23	To int. 4 months, 25 days	1 46	
Dec.	10	" cash	50 00	
"	"	" int. 4 months, 5 days	1 05	
1845.				
Jan'y	1st	" J. Primrose	40 07	
"	"	" H. Patterson	18 00	
"	4	" Miss Melisha Cash	30 00	
"	"	" Silas Burus	2 77	
"	7	" pump	36 50	
"	"	" 3 months, 18 days	2 29	
Feb'y	1st	" John Primrose	213 12	
"	"	" int. 2 months, 15 days	2 66	
"	9	" J. Primrose	46 00	
"	"	" int. 3 months, 8 days	92	
"	14	" bill of New York	100 00	
"	"	" int. 2 months, 1 day	1 00	
"	24	" bill on New York	150 00	
"	"	" int. 1 month, 22 days	1 30	
"	27	" J. Primrose	225 88	
"	"	" int. 1 month, 18 days	1 79	
Mar.	3	" J. Primrose	60 00	
"	"	" int. 1 month, 12 days	42	
			$2,512 24	

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1845.		Page 29 of ledger.	Dr.	Cr.
		By amount brought over		$35,424 70
		To amount brought forward	$2,512 24	
Mar.	8	" J. Primrose	20 00	
"	"	" int. 1 month, 7 days	12	
"	25	" J. Primrose	100 00	
"	"	" int. 20 days	33	
April	2	" J. Primrose	125 63	
"	"	" int. 13 days	27	
"	12	" bill on New York	113 00	
"	"	" piano	486 26	
"	"	" int. 3 days	30	
			$3,358 15	
		By balance due April 15th, 1845		$32,066 55
		" interest to June 21st		359 73
May	2	To J. Primrose	$283 86	
"	"	" int. 1 month, 21 days	1 52	
"	18	" J. Primrose	16 60	
"	"	" int. 1 month, 15 days	12	
June	2	" J. Primrose	114 88	
"	"	" int. 21 days	42	
"	12	" self, for M'r Cook	60 00	
"	"	" int. 13 days	12	
			$477 52	
		" balance due June 21st, 1845		$31,941 78
		By balance brought down		$31,941 78
		" John Devereux's estate		8 70
		" do do		11 00

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1845.		Page 30 of ledger.	Dr.	Cr.
		By amount brought forward		$31,941 78
June	21	Interest 1 year		1,916 50
		By sundry small items against the estate of J. Devereux, viz:		
		Paid M'r's S. E. Devereux $11 71		
		" " A. M. Devereux 19 51		

Frances Devereux, in account, &c.—Continued.

		W. Rogers, for wood..... 51 00		
		Langdon Buller..... 13 00		
		$95 22		
		Less your ¼..... 23 80		
				71 42
June	23	To J. Primrose.....	$20 00	
"	"	" int. 11 months, 28 days	1 19	
July	1st	" J. Primrose.....	85 89	
"	"	" interest.....	5 00	
"	8	" cash, $10; int. .57.....	10 57	
"	9	" C. T. Haigh, $21.71; int. $1.23.....	22 94	
"	10	" cash, $35.00; int. $1.99	36 99	
"	19	" C. F. Haigh, $15.88; int. .87.....	16 75	
Aug.	1	" J. P——e, $97.26: int. $5.18	102 44	
"	13	" Miss Ogden, $150; int. $7.70	157 70	
Sep.	4	" cash, $10; int. .48.....	10 48	
"	6	" J. P——e, $87.58; int. 4.15.....	91 73	
"	"	" cash, $100; int. 4.75.....	104 75	
"	13	" Snow's bill, $13.18; int. .63.....	13 81	
"	20	" cash, $30; int. 1.35.....	31 35	
"	30	" cash, 20; " .87.....	20 87	
Oct.	6	" J. P——e, $30.15; int. $1.28.....	31 43	
"	16	" cash, $200; int. $8.16.....	208 16	
Nov.	4	" J. P——e, $76.73; int. $2.91.....	79 63	
"	"	" cash, $100; int. $3.80.....	103 80	
		" amounts carried over.....	$1,155 49	$33,929 70
400		Page 31 of ledger.	Dr.	Cr.
		Am't brought over.....	.....	$33,929 70
		" " "	$1,155 49	
Nov.	8	To cash, $200; int. $7.43.....	207 43	
"	17	" J. P——e, $60; int. 2.14.....	62 14	
Dec.	1	" J. P——e, 106.26; int. 3.52.....	109 78	
"	4	" J. P——e, 34.72. int. 1.14.....	35 86	
"	25	" cash, $800; int. 23.60.....	823 60	
1846.				
Jan.	1	" J. P——e, $149.29; int. 4.27.....	153 56	
Feb'y	2	" J. P——e, 103.08; int. 2.37.....	105 45	
"	"	" cash, 100.00; int. 2.30.....	102 30	
"	4	" cash, 200.00; int. 4.60.....	204 60	
"	23	" cash, 400.00; int. 7.86.....	407 86	
"	28	" Miss Ogden, 150.00; int. 2.85.....	152 85	
Mar.	2	" J. P——e, 70.46; int. 1.27.....	71 73	
"	30	" cash, 500.00; int. 6.83.....	506 83	
Apr.	1	" J. P——e, 156.62; int. 2.11.....	158 73	
"	24	" cash, 250.00; int. 1.37.....	251 37	
May	1	" J. P——e, 143.11; int. 1.21.....	144 32	
June	1	" J. P——e, 109.54; int. .36.....	109 90	
"	"	" J. P——e, for taxes, 12.60: int. .04.....	12 64	
"	13	" cash, $20.00; int. .02.....	20 02	
"	"	" cash, 106.00; int. .14.....	106 14	
"	16	" cash, 27.12; int. .02.....	27 14	
"	19	" cash, 25.00.....	25 00	
		" balance due June 21st, 1846.....	28,974 96	
			33,929 70	$33,929 70
		By *by* balance brought down, cash, Feb., 1846, to C. A. Edmonston omitted.....	30 00	
401				
1		Page 32 of ledger:	Dr.	Cr.
		By amount due June 22nd, 1846, as per M'r Whiting's statement.....	.....	$29,664 60

Frances Devereux, in account, &c.—Continued.

		By interest one year		1,779 90
		" amount due for crop of 1845 as per J. Devereux's account		2,256 74
		" interest one year		135 30
		" amount due for crop 1846		190 95
		" due on account of estate of J. Devereux		91 75
June	23	To cash $50, int. $2.98	$52 98	
"	24	" Miss Parmelee $100, int. $5.95	105 95	
"	30	" cash $285, int. $16.67	301 67	
July	6	" cash 170, int. 9.77	179 77	
"	10	" cash 50, int. 2.85	52 85	
"	13	" M. B. Royster $887.14, int. $49.96	937 10	
"	17	" cash $106, int. 5.90	111 90	
"	25	" cash $52.30, int. $2.82	55 12	
Aug.	1	" cash 15, int. .80	15 80	
"	"	" bill on N. Y. $150, int. $8	158 00	
"	6	" cash $32, int. $1.68	33 68	
"	24	" cash $16, int. .79	16 79	
Sept.	2	" taxes 16.20, int. .77	16 97	
"	4	" cash $10, int. .52	10 52	
"	8	" cash $30, int. 1.41	31 41	
"	14	" cash 15, int. .68	15 68	
"	22	" cash $50, int. 2.25	52 25	
"	23	" com. $12.50, int. 62	13 12	
"	29	" cash 15, int. .65	15 65	
Oct.	7	" cash 15, int. .62	15 62	
"	15	" W. Stronach $516.25, int. $21.15	537 40	
"	"	" W. D. Cooke 50, int. 2.05	52 05	
		" amounts carried over	$2,782 28	$34,049 24

402

			DR.	CR.
		Page 33 of ledger:		
		Amount brought over		$34,049 24
		Amount brought over	$2,782 28	
Oct.	15	To cash $15, int. .61	15 61	
"	19	" W. Peace $747.13, int. $30.12	777 25	
"	29	" W. D. Cooke 50, " 1.93	51 93	
Nov.	17	" " " 50, " 1.78	51 78	
"	28	" " " 150, " 5.07	155 07	
Dec.	7	" " " 100, " 3.23	103 23	
"	18	" " " 50, " 1.52	51 52	
"	26	" " " 150, " 4.37	154 37	
1847				
Feb'y	1	" bill on New York	150 00	
		" interest	3 50	
"	4	" W. D. Cooke, $530	530 00	
		" interest 12.10	12 10	
"	19	" W. D. Cooke $150, int. $3 05	153 05	
Mar.	13	" " " 100, " 1.63	101 63	
"	22	" " " 150, " 2.25	152 25	
Apr.	12	" " " 275, " 3.16	278 16	
"	24	" " " 25, " .23	25 23	
"	30	" " " 100, " .85	100 85	
May	21	" " " 100, " .50	100 50	
"	22	" " " 231.15 " 1.15	232 30	
"	25	" " " 200, " .86	200 86	
June	7	" W. Peace 820.30, " 1.91	822 31	
"	8	" W. D. Cooke 200, " .43	200 43	
"	21	" cash to C. A. Edmonston, paid Feb'y 15th, 1846	30 00	
		Int. 16 months 6 days	2 40	
		" amounts carried over	$7,238 61	$34,049 24

Frances Devereux, in account, &c.—Continued.

403				
1847		Page 34 of ledger:	DR.	CR.
		Amount brought over		$34,049 24
		Amount brought over	$7,238 61	
June	21	To your ½ balance due the executors of J. Devereux, deceased	1,772 65	
"	"	" int. from Jan'y 1st, 1846, compounded	159 95	
		" your ½ of stock valued by George W. Mordecai	1,684 96	
		" int. from Jan'y 1st, 1845, compounded	262 16	
		" payments to Miss Ogden omitted in course,		
		Aug. 15th, 1846 $150 00		
		Feb'y 15th, 1847 150 00		
		Int. on both 10 80	310 80	
			$11,429 13	$34,049 24
1847				
June	22	Balance of above account due M'r's D. this day		22,620 11
Nov.	12	Int. to date		527 80
		The following items to bear interest from Nov. 8th, 1848, settled and adjudged by Bishop Polk		
		The order on F. Devereux heretofore charged her, and at interest from June 22nd, 1,341.73		
		Half cost of monument 496.00		
		Cost of graveyard, deducting her proportion, 200.25		
		Charged her in bond to C. M. Clark for M'r's G. Devereux, 559.42, with int. from		
404				
1847		Page 35 of ledger:	DR.	CR.
		Brought over 2,037 08		$23,147 91
		From 29th Sept. 1839 874 80		
		Annuities heretofore charged & now reversed (without int.) 1,950 00		4,862 78
		(Note.—Those items of reversal I have never agreed to & protested against when added, & only returned my acct. in accordance to them to save my mother a ——— of ———; they are all unjust.)		
July	1st.	Balance due Wm. Peace and paid him	$6 97	
		Int. to Nov. 12, 4 mos. 12 days	15	
Sep.	2	Note to Lawrence Hinton taken up	522 80	
		Interest as above, 2 months 10 days	7 84	
Nov.	9	Cash	100 00	
"	12	Cash to Mrs. McPheeters	200 00	
"	13	George Sander's note taken up	213 33	
"	13	James Nunn's " " "	1,071 27	
		Int. on above 4 — —	1 28	
Oct.	23	Cash per W. D. Cooke	75 00	
		Interest 14 days	23	
"	11	Cash to W. D. Cooke	100 00	
		Int. 1 month 1 day	50	
"	5	Cash per W. D. Cooke	75 00	
		Int. 1 month 7 days	40	
Sep.	2	Cash to W. D. Cooke	200 00	
		Int. 2 months 10 days	2 33	
Aug.	28	Cash per W. D. Cooke, int. 2 mos. 15 days	50 62	
"	17	" " " " " " " 25 "	76 06	
"	12	" " " " " " 3 mos. " "	50 75	
July	26	" " " " " " " " 16 "	101 75	
			$2,856 30	$28,010 69

Frances Devereux, in account, &c.—Continued.

			Dr.	Cr.
405				
1847.		Page 36 of ledger:		
		Brought over	$2,856 30	$28,010 69
		Credit 4 days' interest on balance		3 24
		Balance due Mrs. D., Nov. 12th	25,157 63	
			$28,013 93	$28,013 93
Nov.	12	By balance brought down		25,157 63
June	7	Mrs. F. A. Polk in New York	225 00	
		Int. to June 21st, 1848	14 02	
Sep.	10	To two cheeses in N. Y.	8 33	
		" int.	37	
Oct.	26	" W. D. Cooke, $175, int. $6.20	181 20	
Nov.	20	" " " " 60, " 2.10	62 10	
"	23	" " " " 50, " 1.73	51 73	
"	29	" " " " 115, " 3.86	118 86	
Dec.	24	" " " " 150, " 4.45	154 45	
"	29	" " " " 150, " 4.34	154 34	
1848.				
Jan'y	3	" " " " 200, " 5.60	205 60	
"	"	" " " " 100, " 2.66	102 66	
"	25	" " " " 100, " 2.43	102 43	
"	28	" " " " 50, " 1.20	51 20	
Feb.	1	" " " " 40, " .93	40 83	
"	5	" " " " 50, " 1.12	51 12	
"	11	" " " " 75, " 1.62	76 62	
"	14	" " " " 40, " .84	40 84	
"	22	" " " " 150, " 2.97	152 97	
"	26	" " " " 50, " .95	50 95	
Mar.	15	" " " " 100, " 1.60	101 60	
			$1,947 32	
406				
1848.		Page 37 of ledger:	Dr.	Cr.
		Amount brought over	$1,947 32	
Mar.	18	To W. D. Cooke $200.00, int. $3.10	203 10	
"	20	" " " " 200.00, " 3.03	203 03	
"	22	" " " " 200.50, " 3.03	205 53	
"	27	" " " " 100.00, " 1.40	101 40	
Apr.	1	" " " " 50.00, " .67	50 67	
"	17	" " " " 125.00, " 1.33	126 33	
"	22	" " " " 500.00, " 5.00	505 00	
"	26	" " " " 150.00, " 1.37	151 37	
May	1	" " " " 450.00, " 3.82	453 82	
"	13	" " " " 150.00, " .92	150 92	
June	10	" Mr. Cassady 100.00, " .18	100 18	
"	20	" D. L. Swain for taxes	4 60	
Nov.	12	By balance due this day as per settlement		$25,157 63
		" int. to June 21st, 1848		917 18
		" received from J. Devereux on account of Mrs. Devereux		636 48
			$4,203 27	$26,711 29
		Balance due June 21st, 1878		22,508 02
June	21	To the following items entered on the 12th November to my mother's credit and now reversed, being fully satisfied she did not understand them, and, if she did, would not have pressed them, viz:		
		Order on J. Devereux $1,341 73		

Frances Devereux, in account, &c.—Continued.

407				
1848.		Page 38 of ledger.	Dr.	Cr.
		Brought over		$22,508 02
		Brought over $1,341 73		
		Int. for one year 80 50		
			1,422 23	
		Note.—This entry to my mother's credit, Nov. 12th, is clearly a mistake, she never having been charged with the order.		
		Half cost of monument $496		
		Annuities charged at sundry times and improperly reversed 1,950		
		$2,446		
		Int. from Nov, 12th, 7 mo's, 9 days. 89 27		
			2,535 27	
		Annuity to Miss Ogden, Aug. 15th, 1848	150 00	
		Int. to June 21st, 1848, 10 months	7 50	
		Annuity to Miss Ogden, Feb'y 15th, 1848	150 00	
		Int. to June 21st, 4 months	3 00	
Sept.	15	Cash for books to E. P. Jones	1 75	
Oct.	9	" chairs, cleaning well	2 00	
"	"	" Waltering's bill	12 89½	
"	17	" bill on N. Y., S. M. Chester	11 00	
June	21	Balance	18,212 38	
			$22,508 02	$22,508 02
408				
1848.		Page 39 of ledger.	Dr.	Cr.
		To balance due per last account		$18,212 38
		Int. to June 21st, 1849		1,092 74
		By cash to M'r's Fuller, paid Jan'y 1st, 1847	50 00	
		Int. to June 21st, 1849	4 42	
		By cash to W. D. Cooke, paid June 21st, 1848	150 00	
		Int. one year	9 00	
July	5	By cash to M'r's Fuller	15 00	
		Int. to June 21st, 1849	85	
"	10	" M'r Lacy, $50; int., $2.84	52 84	
"	13	" M'r's Fuller 15; " .84	15 84	
"	"	"		
"	"	" to meal, $6; " .33	6 33	
"	15	" W. D. Cooke, 177.73; " 9.95	187 68	
"	21	" Ferrell, Johnson and Ferrell	12 28	
		" Interest	66	
"	31	" M'r's Fuller, $30.00; int., $1.60	31 60	
Aug.	2	" W. D. Cooke, 5.00; " .26	5 26	
"	7	" M'r's Fuller, 50.00; " 2.63	52 63	
"	15	" Miss Ogden, 150.00; " 7.65	157 65	
"	21	" M'r's Fuller, 25.00; " 1.25	26 25	
"	28	" W. D. Haywood, 9.50; " .46	9 96	
Sept.	1	" M'r's Fuller, 25.00; " 1.20	26 20	
"	7	" J. Primrose, 158.38; " 7.37	165 75	
"	15	" M'r's Fuller, 25.00; " 1.14	26 14	
"	15	" groceries in New York, $67.29		
"	"	" Miss Maitland (books), 4.00		
		" interest 3.26		
			74 55	
Oct.	1	" M'r's Fuller, $25.00; int., $1.08	26 08	
		Carried over	$1,106 97	$19,305 12
409				
1848.		Page 40 of ledger.	Dr.	Cr.
		Amounts brought over	$1,106 97	$19,305 12
Oct.	3	By cash to Thomas H. Briggs	137 75	
"	"	" interest	5 89	

Frances Devereux, in account, &c.—Continued.

			Dr.	Cr.
Oct. 7	By M'r Lacy,	$50 00; int, $2.11	52 11	
" 13	" J. M. Fowles,	25.00; " 1.03	26 03	
" 16	" M'r's Fuller,	80.00; " 3.40	83 40	
" 17	" " "	25.00; " 1.01	26 01	
Nov. 13	" " "	50.00; " 1.81	51 81	
Dec. 1	" " "	50.00; " 1.66	51 66	
" 15	" " "	50.00; " 1.55	51 55	
1849.				
Jan'y 1	" " "	50.00; " 1.41	51 41	
" 15	" " "	50.00; " 1.30	51 30	
" 25	" " "	80.00; " 1.94	81 94	
" "	" taxes,	13.36; " .31	13 67	
" 26	" Brown & Hinton,	32.06; " .77	32 83	
" "	" J. M. Fowles,	50.68; " 1.20	51 88	
" 27	" Jesse Brown,	24.54; " .57	25 11	
" 30	" M'r's Fuller,	50.00; " 1.17	51 17	
Feb'y 15	" " "	50.00; " 1.05	51 05	
" "	" Miss Ogden,	150.00; " 3.15	153 15	
Mar. 1	" M'r's Fuller,	50.00; " .91	50 91	
" 15	" " "	50·00; " .80	50 80	
" 10	" box of wine	25.00; " .40	25 40	
" 19	" G. W. Mordecai	200.00; " 3.66	203 66	
" 30	" M'r's Fuller,	50.00; " .66	50 66	
Apr. 7	" Charles T. Haigh and Son		24 47	
	Interest		29	
" 9	" M'r Lacy,	$50.00; int., .60	50 60	
" 15	" M'r's Fuller,	50.00; " .55	50 55	
	Carried over		$2,664 03	$19,305 19

410

1849.		Dr.	Cr.
	Page 41 of ledger.		
	Amounts brought over	$2,664 03	$19,305 19
Apr. 25	To E. Colburn, $84.00; int., .78	84 78	
May 1	" M'r's Fuller, 50.00; " .42	50 42	
" 15	" " " 50.00; " .30	50 30	
	Interest paid Colburn	9 25	
		$2,858 78	$19,305 19
	Balance due the estate of M'r's Devereux, June 21st, 1849		$16,446 34

Entry in account-book marked "50," referred to in account "B," with report of com'r.

Entry in account-book marked "50," offered in evidence by assignees in bankruptcy of T. P. Devereux.

Memorandum of advances made:

1839.

May 18.	Bill on B. B. & Co. for S. E. Devereux	$100 00
" "	Check	50 00
June 8.	Cash	10 00
" 29.	Cash to —— the church	15 00
July 6.	Cash	500 00
" 18.	Two checks for 200 dollars each, dated Aug. 24th, 1839	400
" 19.		$1,075 00
" "		

Received the above as stated.

(S'gn') FRANCES DEVEREUX.

411 *Affidavit of Walter Clark, one of the assignees, with report of com'r.*

BLAKE ET AL.
against
W. J. HAWKINS, WALTER CLARKE, ASSIGNEES, et al.

Affidavit of Walter Clarke, defendant herein, before Commissioner Page.

This affiant, being duly sworn, deposes and says, that he has not in his possession, as assignee in bankruptcy of T. P. Devereux, or otherwise, nor has he ever had possession of, nor has he ever seen, nor has he any knowledge whatsoever of any vouchers of payments made or purporting to have been made by T. P. Devereux on behalf or at the instance of M'r's Frances Devereux, other than the vouchers already produced, and now on file before M'r Commissioner Page, in this cause.

WALTER CLARK.

Sworn and subscribed before me this 5th day of December, A. D. 1873.

E. F. PAGE,
Commissioner.

Affidavit of R. C. Badger, with report of com'r.

BLAKE ET AL.
vs.
W. J. HAWKINS, WALTER CLARK, ASSIGNEES, et al.

Before Commissioner Page.

R. C. Badger, defendant herein, being duly sworn, says that he is the party to the record, appearing as administrator de bonis non of
412 M'r's Frances Devereux; that he has in his possession no vouchers or papers pertaining to the administration of the trust-fund, the subject of this suit; that he has never seen any of such vouchers or papers, nor does he know of the whereabouts of any such, other than those already produced in the cause, and now on file with M'r Commissioner Page; and that no assets of said estate have come into his possession to be administered.

Sworn to before me this the 14th day of December, 1873.

N. J. RIDDICK, *Clerk*,
By W. C. BROOKS, *Deputy*.

Filing of exceptions to report by defendants.

And afterwards, during the same term, the defendants, W. J. Hawkins and Walter Clark, assignees in bankruptcy of T. P. Devereux, by their attorneys aforesaid, file their exceptions to the report and accounts of M'r Commissioner Page, in the words and figures following, to wit:

Exceptions of def'd'ts, assignees in bankruptcy of T. P. Devereux.

BLAKE ET AL.
against
HAWKINS, CLARK, &C., ET AL.

Exceptions to report of M'r Commissioner Page, by Hawkins and Clark, assignees.

Exceptions to report of M'r Commissioner Page, filed at fall term, 1873, on behalf of defendants, W. J. Hawkins and Walter Clark, as assignees in bankruptcy of T. P. Devereux, bankrupt, deceased.

413 The defendants except to the report of the commissioner:

1. That the commissioner has not stated the account of the item of $3,000, as requested by these defendants in Par. I of the report, to wit, that he should consider the said item of $3,000 as the interest on the charge of $50,000, due March 1st, 1840, and that it should be reduced each year thereafter to the interest on so much of the $50,000 charge as remained then unpaid and not appointed.

2. That the commissioner did not receive and consider a paper-writing marked "Exhibit X."

3. That the commissioner did not consider the paper marked "E E" as sufficient evidence of an account stated between the parties, and conclusive as to all matters between them up to June 21st, 1846, except as to those matters therein particularly mentioned as excepted.

4. That the commissioner in his report found it, as a fact, that S. W. Whiting was merely the agent of T. P. Devereux, in taking said account, whereas in truth the evidence shows that said Whiting was selected by both parties to take and state the account between them, and his action in that behalf is contained in the paper marked "E E."

5. These defendants except to the ruling of the commissioner, contained in Par. 4 of his report, and insist that as W. D. Cooke is shown by the evidence to have been the agent of M'r's Frances Dever-
414 eux, the account stated by him, marked "B B," is an account stated between the parties.

6. They except, that the paper marked "D D, being in evidence, the commissioner did not consider it in making up his report.

7. They except that the commissioner did not receive and consider as evidence the entries in the book marked "Ledger" as full evidence of the matters of charge and discharge, between F. D. and T. P. D., whereas defendants insist that the said book should have been so received, for the reasons urged before the commissioner, and set out in his report.

8. They except to the account A—

1st. Because the following items of charge, viz: items of June 21st, 1846, $2,256.74, $120.95, $91.75, with the items of interest on the same, are taken from the statement L L, containing matters of discharge as well as of charge, and the matters of discharge are not allowed.

2nd. That interest is charged on the various items of $3,000 as computed, as interest should not be so computed on either side of the account.

3rd. Because this account is not stated according to the principle contended for by defendants, as set forth in exception I, herein.

9. These defendants except to the account B—

1st. Because the commissioner in his statement of that account has not allowed all the items entered in the book marked "Ledger."

2nd. Because he disallowed the item of $1,772.65.
415 3rd. Because he disallowed the item of $1,684.00.
4th. Because he disallowed the item loss of Trent land, $4,000.,
5th. Because he disallowed the payments made to Miss Odgen, and known in the account as the ½ Ogden annuity.
6th. Because he disallowed the payments made to M'r Primrose, who was the agent of M'r's Devereux.
7th. Because he disallowed the items of discharge of the grave-yard inclosure, and of the Pollock monument, as per the award of S. J. Baker and S. W. Whiting, rendered 29th July, 1847, and marked "Exhibit A A."
10. And these defendants further except to accounts A and B, because the commissioner did not begin these accounts with the balances as appear to be due by the several stated accounts offered in evidence by defendants.
11. They except to account C because the commissioner allows to T. P. D. only the amounts actually paid by him in the purchase of the legacies, whereas, he should have allowed the said Thomas the full amounts thereof.
12. They except to the report of the commissioner, because he charges T. P. Devereux as administrator of M'r's Frances Devereux, whereas, in fact, S. W. Whiting was the administrator of said estate.
13. They except to account D further, that the commissioner has charged interest on the items of charge against the administra-
416 tor for and within the space of two years from the granting of letters of administration.
14. They further except to the account D, that the commissioner has charged T. P. Devereux with the item of October 13th, 1852, valuation of negroes, as per Exhibit T. P., $19,991.00, with interest on that item 18,64.714, and with the several items of June 3rd, 1853.
15. Defendants except to account E, that the commissioner—
1. Has charged interest on the item of $50,000 from the date of M'r's Devereux's death to May 30th, 1868.
2. That the commissioner finds the item of $50,000 to have been appointed by the will of M'r's Devereux, and charges the said T. P. D. with that item in the account "E."

Filing of exceptions to report by plaintiffs.

And afterwards, during the same term, the plaintiffs, by their attorneys aforesaid, filed their exceptions to the report and accounts of M'r Commissioner Page, in the words and figures following, to wit:

Exceptions of plaintiffs.

GRINFILL BLAKE, WIFE, ET AL.
vs.
ASSIGNEES IN BANKRUPTCY OF THOMAS P. Devereux, deceased.

Exceptions of plaintiffs to report of Commissioner Page, filed at November term, 1873.

Exceptions to report of M'r Commissioner Page, filed at November term, 1873, on behalf of plaintiffs, Grinfill Blake, wife, et al.

417 The plaintiffs except to the report of the commissioner—
1. The plaintiffs object to the manner in which the discharges

of Thomas P. Devereux are applied to liquidate the several charges upon land, and insist that all the expenditures made by Thomas P. Devereux for Mrs. Frances Devereux, during her life-time, ought to be applied to liquidate the gross charge of $50,000 on his land, and on interest allowed Thomas P. Devereux on such items of discharge, and hereby except to the report of commissioner, because this method was not adopted in stating account B, and balance-sheet E of the accounts taken by commissioner.

2. The plaintiffs also objected to the charging of the pecuniary legacies against the balance of the fund charged upon Thomas P. Devereux's land, in his hands at M'r's Frances Devereux's death, and insist that said legacies ought to be charged against the general personal assets, and excepts to the account E, because said legacies are charged therein against the said balance found due, of the two charges on lands of Thomas P. Devereux.

3. The plaintiffs further excepted to the allowance of charges for sums paid by T. P. Devereux to M'r's C. E. Fuller, upon the ground that there was no evidence, or at least no sufficient evidence, that T. P. Devereux
418 was authorized by M'r's Frances Devereux to make said payments to M'r's C. E. Fuller, and did make them on account of M'r's Frances Devereux.

The plaintiffs admit that the charges allowed, as above, have been paid by Thomas P. Devereux to M'r's C. E. Fuller, at their respective dates, but insist that there was no sufficient evidence that said payments were made on account of M'r's Frances Devereux, and by her direction.

January 5th, 1874.

HAYWOOD,
FOWLE,
Attorneys for Plaintiffs.

Cause continued.

And thereupon, because the court here are not yet advised what further decree to make of and upon the premises, a day is given to the parties aforesaid, before the court here, on the first Monday of June, A. D. 1874.

Proceedings at June term, A. D. 1874.

At which last-mentioned day, to wit, at a term of the circuit court of the United States for the eastern district of North Carolina, begun and held at the United States court-room, in the city of Raleigh, in the district aforesaid, before the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, presiding, and the Hon. Hugh L. Bond, circuit court judge, associate judges, sitting in equity, on the first Monday in June, in the year of our Lord one thousand eight hundred and seventy-four, and of our Independence the ninety-eighth year, the
419 same being the first day of said month, come the parties aforesaid, by their attorneys aforesaid, except the defendant, Richard C. Badger, administrator, &c., who comes in his own proper person.

Clark & John Devereux, joint trustees of the estate of T. P. Devereux dec'd, made parties defendant.

Whereupon the following proceedings are had in the cause of—

GRINFILL BLAKE AND ELIZABETH J. D. BLAKE, his wife, and John Townsend, and Georgina P. Townsend, his wife, complainants,
against
W'M J. HAWKINS AND WALTER CLARK, assignees in bankruptcy of Thomas P. Devereux, dec'd, a bankrupt, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, deceased, defendants.

In this cause the aforesaid Walter Clark and one John Devereux, claiming to be substituted trustees, jointly, for Thomas P. Devereux, since his decease, in the deed of the 3rd of July, 1839, mentioned in the pleadings, conveying the lands which had descended to M'r's Frances Devereux from her brother, George Pollock, deceased, to the said Thomas P. Devereux, come into court here and apply to be made parties-defendant in this cause, to litigate and protect their rights in the premises; and thereupon, by consent of all the parties, plaintiff and defendant, the said Walter Clark and John Devereux, as such joint substituted trustees, are now and here made parties-defendant in
420 this cause, and allowed herein to litigate and defend their rights in the premises.

M. R. WAITE,
Chief Justice.

By consent cause heard in absence of Executor of T. P. Devereux.

And afterwards, during the same term, the defendants, viva voce, in open court, insisted that the executor of Thomas P. Devereux, deceased, was a necessary party in this cause; but it being conceded by all the parties, plaintiff and defendant, that the said Thomas P. Devereux was entirely insolvent, at the date of his death, and owned no property or estate, real or personal, and the plaintiffs here in open court waiving all claim against the said executor on account of any estate or property acquired by the said Thomas P. Devereux since his bankruptcy, by consent of all parties, here in open court given, the cause is proceeded with and heard in the absence of the executor of the said Thomas P. Devereux.

Final decree.

Whereupon, the following proceedings are had in the cause of.—

GRINFILL BLAKE AND ELIZABETH J. DEVEREUX Blake his wife, and John Townsend and Georgina P. Townsend his wife, complainants,

against

421 WILLIAM J. HAWKINS AND WALTER Clark, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, Walter Clark and John Devereux, as trustees of the estate of the said Thomas P. Devereux, and Richard C. Badger, administrator de bonis non cum testamento annexo of Frances Devereux, decesased, defendants.

This cause came on to be further heard at this term, and was argued by counsel, and thereupon, upon consideration thereof, the court did declare—

1. That the testatrix Frances Devereux did not by her last will and testament appoint the fund of fifty thousand dollars ($50,000), which by the deed of July 3rd, 1839, conveying her lands to Thomas P. Devereux, she had power to charge upon said land, to be part of her general personal estate in the hands of her executors, nor appoint the said fund at all, except so far as it is necessary to resort to the same to pay off the pecuniary legacies, bequeathed by her in her said will, after exhausting for that purpose what remains of her general personal assets, after payment of her debts and funeral expenses, and the costs of administering her estate.

422 2. That the deed of 1845, executed by the said Frances, styled in the answer of T. P. Devereux "The deed of explanation," was effectual, and that the operation thereof was to reduce the annuity of three thousand dollars ($3,000), charged upon said lands, in said deed of 1839, proportionably as the said Frances reduced the aforesaid fifty thousand dollars ($50,000) by her appointments or outlays, so as to make said annuity, in each and every year, equal to six per cent. interest on so much of said fund of $50,000 as remained unappointed or unexpended by the said Frances, in each and every year respectively.

3. That the plaintiffs are not entitled to any account of the said fund of $50,000, except so far as it is necessary to take an account of the same to ascertain the amount of the aforesaid annuity, in each and every year during the life of the said Frances, but that they are entitled to an account of so much of said annuity as remained unexpended in the hands of Thomas P. Devereux at the date of the decease of the said Frances, and also to an account of so much and such parts of the general personal estate of the said Frances, including the negro-slaves divided between the said Thomas P. and the defendant, Leonidas Polk, in

423 October 1852, as came to the hands of the said Thomas P. after the decease of the said Frances; but the said Thomas P. is not liable to account with the plaintiffs generally, as executor of the last will and testament of the said Frances, for all her personal estate—and especially is he not liable to account with them for so much, or such parts, of said personal estate as came into the hands of Seymour Whit-

ing, deceased, to be administered by him, either as administrator pendente lite, or as administrator cum testamento annexo of the said Frances.

4. That in taking the account with the estate of the said Thomas P., now in the hands of the defendants, who are his assignees in bankruptcy, the said assignees are to be credited with the amounts which the said Thomas P. expended in purchasing up the pecuniary legacies bequeathed by the said Frances to the several charitable societies, and the said assignees are not to be credited with the full amount of said legacies, unless, or except, where the said Thomas P. paid the full amount therefor.

5. That, in taking the account last aforesaid, the master shall
424 regard the paper-writing, bearing date October 20th, 1846, signed by Frances Devereux, and accompanying M'r Commissioner Page's report, filed at this term as an exhibit, marked "E E," as a stated account between the said Frances and Thomas P. Devereux, deceased, conclusive of all matters of account between them, both in respect to the $50,000 fund, and the $3,000 annuity aforesaid, previous to and including the 22nd day of June, 1846, excepting such matters of account as are, by the express terms of said paper-writing, saved out of its operation, for future adjustment, by reference, or otherwise; ascertaining the balance due by the said Thomas P. to the said Frances, subject to the exceptions and corrections last aforesaid, on the said 22nd day of June, 1846, to be twenty-nine thousand six hundred and sixty-four dollars and sixty cents ($29,664.60).

6. That, in taking said account, the master shall also regard the paper-writing, made out some time in the latter part of the year 1847, signed by William D. Cooke, and accompanying M'r Commissioner Page's said report, as an exhibit, marked "B B," as a stated account between the said Frances and Thomas P. Devereux, deceased, conclu-
sive of all matters of account between them, in respect to the
425 $50,000 fund, and the $3,000 annuity aforesaid, and all other matters, previous to and including the 21st day of June, 1847, saving such matters of account, as are, by the note at the foot of said paper-writing, expressly excepted out of its operation, for future adjustment, by reference, or otherwise, ascertaining the balance due, by the said Thomas P. to the said Frances, subject to the exceptions and corrections last aforesaid, on the said 21st day of June, 1847, to be twenty-five thousand and thirty-six dollars and ninety-seven cents ($25,036.97).

And thereupon it was ordered, adjudged, and decreed, that the matters of account involved in the pleadings, be referred back to E. F. Page, esquire, who is hereby appointed especial master for that purpose, to take an account upon the basis of this decree, and the declarations and instructions hereinbefore contained, and report to this court, at its next term.

And afterwards, during the present term of this court, the plaintiffs, by their counsel, in open court, waived their right to have an account taken, upon the basis of the former part of this decree, and the dec-
426 larations and instructions therein contained, and admitted that, upon an account taken, in accordance with said declarations and instructions, it would appear that Thomas P. Devereux, deceased, was not, at the date of the death of Frances Devereux, indebted to her in any amount, and all the defendants herein, by their counsel, in open court, conceded as much.

And it was, in like manner, admitted and conceded, by all the parties to this cause, plaintiff and defendant, that it sufficiently appears

by such portions of M'r Commissioner Page's accounts, filed at this term, as are not excepted to either by the plaintiffs or defendants, that on the 31st day of May, 1868, the date of Thomas P. Devereux's bankruptcy, the said Thomas P. had in his hands, of the general personal assets of M'r's Frances Devereux, after the payment of $8,424.36, of debts, funeral expenses, and costs of administration, the sum of $41,633, which includes interest to that date.

That, on the same date, he had expended, in payment or purchase of the pecuniary legacies, bequeathed by the will of the said Frances, the sum of $39,466.58, which includes interest to that date, which lat-
427 ter sum, being deducted from the former, in accordance with the principles of account, and the directions and instructions set out in the previous part of this decree, leaves a balance in the hands of the said Thomas P. Devereux, at the date last aforesaid, of the general assets of the said Frances Devereux, deceased, of $2,166.42, for which balance the estate of the said Thomas P., in the hands of his assignees in bankruptcy, is liable to the next of kin of the said Frances; and for one-third of which balance, to wit, the sum of $722.14, the feme plaintiffs, as two of said next of kin, are entitled to make proof in said bankruptcy against the estate of the said Thomas P., in the hands of his assignees aforesaid.

And, thereupon, it being obvious to the court, that a new reference and further account in the premises was entirely useless and unnecessary it was finally ordered, adjudged, and decreed, that the plaintiffs, Grinfill Blake, and Elizabeth J., his wife, and John Townsend, and Georgina P., his wife, do recover of the defendants, William G. Hawkins and Walter Clark, assignees in bankruptcy, of the estate and effects of Thomas
428 P. Devereux, deceased, a bankrupt, and of the said Walter Clark, and the defendant, John Devereux, substituted trustees for Thomas P. Devereux, deceased, under the deed for the Pollock land, of July 3rd, 1839, the sum of $722.14, to be paid out of the assets and estate of the said Thomas P. Devereux, in their hand respectively, ratably and pari passu with the other debts of the said Thomas P., which have been, and shall be proved by his creditors against said estate and effects, in the hand of said defendants, respectively.

That E. F. Page, esquire, be allowed $150.00 for his report and accounts filed at this term; and John Devereux be allowed $50.00 for his services rendered in taking said account; both of said sums to be taxed in the costs.

That the costs in this cause, to be taxed by the clerk, including the two items last aforesaid, be paid by the assignees in bankruptcy, and substituted trustees aforesaid, out of the estate and effects, which were of Thomas P. Devereux, now in their hands, except such costs as were incurred before the filing of the petition in bankruptcy of T. P. Devereux, deceased, for which costs last aforesaid, judgment is given
429 against the defendants, assignees and trustees aforesaid, the same to be proved against the estate and effects of the said bankrupt, in their hands, and to be paid ratably, and pari passu, with the other debts of the said T. P. Devereux, which have been, and shall be proved by his general creditors against the said estate and effects.

Appeal.

From which said decision of the court and the decree made in pursuance thereof, the plaintiffs, Grinfill Blake and Elizabeth J. Devereux Blake, his wife, and John Townsend, and Georgina Townsend, his wife,

now and here in open court, all the defendants being present and represented by counsel, crave and appeal to the Supreme Court of the United States, which appeal is allowed them by the court, and any further notice of appeal is waived by the defendants, and each and all of them. And the amount of the supersedeas-bonds to be filed by the appellants is fixed by the court here at $500.00; and the said appellants forthwith file their said supersedeas-bond for $500, with J. N. Bunting and J. Rowan Rogers as sureties thereto, the sufficiency of which bond is admitted by the defendants, and the same is thereupon
430 approved by the court here.

M. R. WAITE,
Chief Justice Supreme Court United States.

The foregoing cause was decided by me, at the June term A. D. 1874, and the counsel were permitted to settle the details of the decree in vacation.

The details were not agreed upon until the 22nd January, 1875, when the decree, as drafted, was forwarded to me for my approval and signature, and at that date I ordered it enrolled, and allowed the plaintiffs' appeal and approved the appeal bond, the defendant's waiving any further or other notice of the appeal and any formal citation.

January 22nd, 1875.

M. R. WAITE,
Chief Justice, &c.

431 *Appeal bond.*

UNITED STATES OF AMERICA,
Eastern District of North Carolina, ss:

Know all men by these presents that we, Grinfill Blake, John Townsend, John N. Bunting, and J. Rowan Rogers are held and firmly bound unto William J. Hawkins and Walter Clark, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, dec'd, a bankrupt, to Walter Clark, and John Devereux, as trustees of the estate of the said Thomas P. Devereux, and to R. C. Badger, adm'r de bonis non, cum testamento annexo, of Francis Devereux, dec'd, in the full and just sum of five hundred dollars, to be paid to the said obligees and their several certain attorneys, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 6th day of January, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately at a circuit court of the United States for the eastern district of North Carolina, sitting in equity in a suit pending in said court between the said Grinfill Blake and Elizabeth J. Devereux Blake, his wife, and the said John Townsend and Georgiana P. Townsend, his wife, plaintiffs, and the within-named obligees defendants, a decree was rendered which was unsatisfactory to the said plaintiffs, and from which they craved an appeal to the Supreme Court of the United States then and there in open court, all the defendants being present and represented by counsel, which said appeal was then and there allowed by the court:

Now, the condition of the above obligation is such that if the said Grinfill Blake and Elizabeth J. Devereux Blake, his wife, and John Townsend and Georgiana P. Townsend, his wife, shall prosecute their said appeal to effect and answer all damages and costs, if they fail to

make their plea good, then the above obligation to be void, else to remain in full force and virtue.

GRINFILL BLAKE, [SEAL.]
By his att'y W. G. HAYWOOD.
JOHN TOWNSEND, [SEAL.]
By his att'y W. G. HAYWOOD.
J. ROWAN ROGERS. [SEAL.]
J. N. BUNTING. [SEAL.]

432 Sealed and delivered in presence of—

Approved January 22, A. D. 1875.

M. R. WAITE,
Chief Justice Sup. Ct. U. S.

(Indorsed:) No. 1 E. Grinfill Blake and wife and others vs. W. J. Hawkins and Walter Clark, assignees, &c., & others. Appeal bond. Filed Feb'y 2nd, 1875. N. J. Riddick, clerk.

433 *Certificate of clerk.*

EASTERN DISTRICT OF NORTH CAROLINA, *ss:*

I, N. J. Riddick, clerk of the circuit court of the United States, within and for the said eastern district of North Carolina, do hereby certify the above and foregoing to be a full, true, and perfect transcript from the record of all the proceedings, which have been had in the cause in said court, wherein Grinfill Blake, and Elizabeth J. Devereux Blake, his wife, and John Townsend, and Georgina P. Townsend, his wife, are complainants, and William J. Hawkins and Walter Clark, as assignees in bankruptcy of the estate and effects of Thomas P. Devereux, deceased, a bankrupt, Walter Clark and John Devereux, as trustees of the estate of the said Thomas P. Devereux, and Richard C. Badger, administrator de bonis non, cum testamento annexo of Frances Devereux, deceased, are defendants, as appears from the records of said court remaining in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Raleigh, in said district, this day of April, A. D. 1875.

[SEAL.] N. J. RIDDICK, *Clerk.*

(Indorsement on cover:) No. 315. Grinfill Blake and E. J. D. Blake, his wife, John Townsend and G. P. Townsend, his wife, appellants, vs. William J. Hawkins and Walter Clarke, assignees of Thomas P. Devereux, dec'd, a bankrupt, et al. E. North Carolina. C. C. U. S. Filed 22nd November, 1875.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 56.

GRINFILL BLAKE AND WIFE AND OTHERS,

vs.

W. J. HAWKINS AND WALTER CLARK, ASSIGNEES, AND OTHERS.

Brief for Plaintiffs and Appellants.

PREPARED BY ED. GRAHAM HAYWOOD.

EDWARDS, BROUGHTON & Co., PTS. & BINDERS, RALEIGH.

derived from the said George Pollok. The estate and property greatly exceeded in value the charges and trusts imposed upon them. Among other charges and trusts specified in said last mentioned deed, were the following:

"*First.* That the said Thomas P. Devereux, and his heirs and assigns, "shall, on the first day of March in each and every year, during the life "of the said Frances Devereux, pay to the said Frances, into her own "hands, or according to her own order, and to her sole and separate use, "and subject to her own disposal, as if she were a feme sole and un- "married, the yearly sum of three thousand dollars."

* * * * * * * * * * * * *

"*Thirdly.* That the said Thomas P. Devereux, his heirs or assigns, "shall invest for, or pay to the said Frances Devereux, at such times, in "such proportions, and in such manner and form as she shall direct and "require, to, and for her own sole and separate use, and subject to her "own disposal by will, deed, or writings in nature thereof, or otherwise, "to all intents and purposes (notwithstanding her coverture) as if she "were a feme sole and unmarried, the sum of fifty thousand dollars; "but if the said sum of money, or any part thereof, shall remain unpaid, "or shall not be invested during her life, and if the said Frances shall "not by deed, or will, or writing in nature thereof, or by some other act "give, grant, dispose, or direct any payment, investment, or application "of the same, then the said sum of money, or so much thereof as shall "remain not paid, given, granted, disposed, or directed to be invested, "paid or applied, shall be considered as lapsing, and the charge therefor "as extinguished for the benefit of the said Thomas."

The only children of the said John and Frances were the said Thomas P. Devereux, their eldest son, Frances Ann, who had intermarried with Leonidas Polk, Bishop of Louisiana, before the execution of said deeds, and George P. Devereux, who had died in 1837, leaving him surviving his only children and heirs at law, the *feme* Plaintiffs Elizabeth J. and Georgiana P.

In 1844 John Devereux died; and in 1849 his widow Frances Devereux died, having first made and published her last will and testament, bearing date 23rd December, 1847, which was admitted to probate in the Court of Pleas and Quarter Sessions for the County of Wake, on the 3rd Monday of August, 1852. The first and introductory clause

of said last will and testament, (*vide exhibit B. with amended bill, Record, pp.* 45 to 49,) is as follows:

"*In the name of God, Amen.*—I, FRANCES DEVEREUX, in the State "of North Carolina, being of sound and disposing mind and memory "and in the enjoyment of my usual health, do make and ordain this my "last will and testament, intending thereby to execute all powers vested "in me and enacted in any deed or deeds heretofore executed, particu- "larly those powers created in my favor by two certain deeds settling "and assuring the estate of my late brother, George Pollock, to my son, "Thomas P. Devereux, dated sometime in the month of July, in the "year of our Lord eighteen hundred and thirty-nine, and executed by "my late husband and myself."

By the *first five* items of said will, five legacies, of $4,000 each, are bequeathed to each of five several charitable institutions; by the *sixth* item $500 is bequeathed to her Executors for a charitable purpose; by the *eighth* item $7,500 is bequeathed to Thos. P. Devereux, in trust, to apply the income on the same annually to the payment of certain annuities and charities therein specified; by the *twelfth* item $500 is bequeathed to S. S. Souter, for a charitable purpose specified. There are no other pecuniary legacies given in the will. Frederick Nash, senior, Thos. P. Devereux, John Primrose and William D. Cooke are appointed Executors. The will contains no residuary devise or bequest. The heirs at law and next of kin of said testatrix at the date of her decease were the said Thos. P. Devereux, her son, the said Frances Ann Polk, her daughter, and the said Elizabeth J. and Georgina P., the *feme* plaintiffs, her grand-children, representing their father, George P. Devereux, dec'd.

The property of said Frances, at the date of her decease, consisted of so much of the aforesaid $50,000 and annuity of $3,000 *per annum*, charged upon the land conveyed to T. P. Devereux by the deed of July 3rd, 1839, as the testatrix had not appointed or expended during her lifetime—upwards of sixty negro slaves—her growing crop and farming stock and utensils, on her farm in Bertie County, N. C., which she was cultivating jointly with her grandson, John

$50,000
500
7,500
500
$23,500

Devereux the younger, the son of the said Thos. P.—her household and kitchen furniture at her residence in the city of Raleigh, and some small amount, in cash on hand, and petty debts due to her.

On the 26th day of March, 1859, the Plaintiffs, Elizabeth J., (together with Frank G. Q. Umsted, who was then her husband, but has died pending this suit,) and Georgina P., filed their bill in equity in the Circuit Court of the United States for the District of North Carolina against Thos. P. Devereux and Leonidas Polk, and Frances Ann, his wife, setting forth therein the foregoing facts: (*vide Record, pp.* 1 *to* 13;) and further alleging therein, that notwithstanding the said Thos P. Devereux had pretended to renounce his office as Executor before the Court of Pleas and Quarter Sessions for Wake County, on the 16th of November, 1852, and one S. W. Whiting was then and there appointed Administrator of said Frances, with the will annexed, yet said renunciation was as to them wholly void and of no effect, and the said Thos. P. was accountable to them in Equity, as Executor, for their share of the assets of the said Frances which remained after the payment of her debts, funeral and testamentary expenses, and the legacies given in her will, which last, it was further alleged, did not exhaust said assets, but left a large amount in the hands of said Thos. P., for distribution among the next of kin of said Frances, to one-third of which clear balance the said plaintiffs were entitled.

The bill alleged that said Thomas P. Devereux intermeddled with the assets of said deceased, both before and after his pretended renunciation, and had the entire and exclusive control and administration thereof: that he took possession of said assets immediately upon the decease of said Frances, retained them in his possession, disposed of them from time to time, and converted them to his own use, according to his will and pleasure; and especially that on or near the 7*th of October*, A. D. 1852, the said Thomas P. Dev-

ereux, before the appointment of Whiting as Administrator, with the will annexed, caused certain slaves belonging to the estate of the said Frances Devereux, deceased, amounting to the number of fifty-seven, to be appraised and divided between the said Devereux and the said Frances Ann Polk; and that the said Devereux had then in his possession, or in the possession of his attorney or agents, the original paper or a copy thereof, containing the details of said appraisal and division; that said Whiting was appointed by the procurement of said Thomas P. Devereux and as a mere form, the said Devereux becoming his bondsman; that he either never acted at all in the administration of said assets, or acted entirely under the direction of said Devereux; that said Whiting never returned any inventory, nor rendered any account of his administration, and is now deceased; that said Devereux's renunciation of his executorship was a contrivance on his part in order to avoid being called to account; and that he procured said renunciation to be accepted by a concealment and suppression of the facts herein stated.

The bill further alleged that there had been a contest respecting the probate of said will, which had commenced in August, 1849, and had been continued in the courts of North Carolina until November, 1852, during which said S. W. Whiting had been appointed, and had pretended to act as Administrator *pendente lite* of said Testatrix, but that in reality he was only the agent of the said Thos. P. Devereux, who was one of the securities on his administration bond; had not in fact controlled the assets, but the same had been in the possession and under the control and subject to the disposition of the said Devereux during the whole of the time that said controversy was pending; that during that period the said Devereux had purchased up the pecuniary legacies given by the Testatrix for about half their amount, and claimed the profit derived therefrom for himself; that he had paid Textatrix debts, and converted the residue remaining in his hands to his own use, and that her estate

and effects were in fact administered and disposed of by said Devereux before the said Whiting was appointed her Administrator with the will annexed, in Novenber, 1852.

The bill, as originally framed, attempted to attack the probate of said will as fraudulent and irregular, and also to compel said Devereux, as one of the Executors of his father, John Devereux, deceased, to account for the distributive share due to said Frances from her said husband's estate, avering that the same had not been paid to her during her lifetime, but it was afterwards amended in these respects, by striking out all the allegations touching said matters, (*vide amended bill, Record, pp.* 32 *to* 40.) The bill prayed for a discovery and for an account.

The Defendants Leonidas Polk and Frances Ann, his wife, though not served with process, entered an appearance in the cause, but neither demurred nor answered (*Record, p.* 30). The Defendant Thos. P. Devereux appeared and demurred. (*Record, p.* 30). The demurrer was argued and overruled, (*Record*, p. 31.) On motion, the Plaintiffs had leave to amend their bill, which amendments were made in the particulars already suggested. (*Record, pp.* 31 *to* 40). The Defendant T. P. Devereux filed his answer (*Record, pp.* 57 *to* 68).

In his answer the said Defendant admits the genealogies, marriages, residences, deaths, deeds, wills and their probate, and the other main facts set out in the Bill, and denies all fraud. But he insists that upon the proper construction of the two deeds A. (*Record, p.* 40,) and Z. (*Record, p.* 68), it is somewhat doubtful whether the yearly reservation of $3,000 was not intended to be a stipulation for the annual payment of the interest upon the sum of $50,000; but that however this may be, the bargainor Frances so intended it, and if otherwise expressed, it was a mistake in the draft of said deeds. For that after the death of John, the husband of said Frances, in the year 1845, the said Frances executed an instrument declaring such interpretation and intention, which he exhibits with his answer marked X (*Record, pp.*

58, 59 *and* 72). He insists further, that he is not liable to account for the said sum of $50,000, nor for the said interest thereon, because the said Frances did not appoint the same by her will, and therefore the same have lapsed, and become merged and extinct, both the principal and interest, for his benefit, and he refuses to make any discovery, or to render any account of the same (*Record, pp.* 65, 66 *and* 67). He denies that he is accountable to said Plaintiffs as the Executor of Frances Devereux, deceased; says that he renounced that office—denies that he intermeddled with the assets in any other manner than as is set out in his said answer; and in this connection, gives an account of the proceedings relative to the controversy regarding the probate of Frances Devereux' will—of his purchase of the pecuniary legacies from the several charitable institutions, and of some of the dealings and accounts between himself and Whiting, while Whiting was acting as Administrator *pendente lite*, and also after he became Administrator with the will annexed (*Record, pp.* 61 *to* 65); and he files Exhibits of the court proceedings connected with the *caveat* of Frances Devereux' will (*Record, pp.* 77 *to* 87)—and Exhibits V. U. T. S. R. N. Q. P. O. (*Record, pp.* 89 *to* 97), showing his purchase of, and other dealings with legacies given in Frances Devereux's will, and also his conveyance of part of her negro slaves to one Duncan as trustee for Frances Ann Polk, all executed before Whiting was appointed Administrator with the will annexed; and he files Exhibits W. K. and L. (*Record, pp.* 87, 88 *and* 97), showing accounts rendered to said Devereux by said Whiting, and the record of said Whiting's appointment as Administrator *pendente lite.*

The Plaintiffs excepted to the sufficiency of T. P. Devereux's answer, because it failed to set out whether he had not divided fifty-seven negro slaves of the testatrix between himself and Frances Ann Polk, on the 7th of October, 1852, before Whiting was appointed Aministrator with the will annexed—and a paper writing evidencing said division—

death; and to charge all other disbursements made by said T. P. Devereux in respect of the estate of the said Frances, against her general assets.

This decretal order was never re-heard, nor modified in any respect, and the Master proceeded to take the account, *in strict pursuance of its directions;* and at November Term, 1873, of the Circuit Court of the United States, he filed his "*Report,*" with the accompanying accounts, exhibits, and evidence (*Record, pp.* 121 *to* 178). The Defendants, Assignees in Bankruptcy of T. P. Devereux, filed numerous exceptions thereto (*Record, p.* 179—180); and the Plaintiffs also filed some exceptions thereto (*Record, pp.* 180—181); but in consequence of the *decree* finally passed by the Court, it becomes unnecessary to state and examine these exceptions in detail.

At June Term, 1874, the cause came on to be further heard, and was heard accordingly before the Honorable the Chief Justice, M. R Waite, upon the pleadings, exhibits, proofs, former order, Report of the Master, and the exceptions filed thereto (*Record, pp.* 183—184). And a final decree was made, wherein it was *declared* by the Court below:

"1. That the testatrix Frances Devereux did not by her last will and "testament appoint the fund of fifty thousand dollars ($50,000), which "by the deed of July 3rd, 1839, conveying her lands to Thomas P. Deve- "reux, she had power to charge upon said land, to be part of her gen- "eral personal estate in the hands of her executors, nor appoint the said "fund at all, except so far as it is necessary to resort to the same to pay "off the pecuniary legacies, bequeathed by her in her said will, after ex- "hausting for that purpose what remains of her general personal assets, "after payment of her debts and funeral expenses, and the costs of ad- "ministering her estate.

"2. That the deed of 1845, executed by the said Frances, styled in the "answer of T. P. Devereux 'The deed of explanation,' was effectual, "and that the operation thereof was to reduce the annuity of three thous- "and dollars ($3,000), charged upon said lands, in said deed of 1839, pro- "portionably as the said Frances reduced the aforesaid fifty thousand "dollars ($50,000) by her appointments or outlays, so as to make said "annuity, in each and every year, equal to six per cent. interest on so "much of said fund of $50,000 as remained unappointed or unexpended "by the said Frances, in each and every year respectively.

"3. That the plaintiffs are not entitled to any account of the said fund " of $50,000, except so far as it is necessary to take an account of the " same to ascertain the amount of the aforesaid annuity, in each and " every year during the life of the said Frances, but that they are en- " titled to an account of so much of said annuity as remained unex- " pended in the hands of Thomas P. Devereux at the date of the decease " of the said Frances, and also to an account of so much and such parts " of the general personal estate of the said Frances, including the negro " slaves divided between the said Thomas P. and the defendant, Leoni- " das Polk, in October, 1852, as came to the hands of the said Thomas " P. after the decease of the said Frances; but the said Thomas P. is " not liable to account with the plaintiffs generally, as executor of the " last will and testament of the said Frances, for all her personal estate— " and especially is he not liable to account with them for so much, or " such parts, of said personal estate as came into the hands of Seymour " Whiting, deceased, to be administered by him, either as administrator " Pendente lite, or as administrator cum testamento annexo of the said " Frances.

"4. That in taking the account with the estate of the said Thomas P., " now in the hands of the defendants, who are his assignees in bank- " ruptcy, the said assignees are to be credited with the amounts which the " said Thomas P. expended in purchasing up the pecuniary legacies be- " queathed by the said Frances to the several charitable societies, and " the said assignees are not to be credited with the full amount of said " legacies, unless, or except, where the said Thomas P. paid the full " amount therefor.

"5. That, in taking the account last aforesaid, the master shall regard " the paper-writing, bearing date October 20th, 1846, signed by Frances " Devereux, and accompanying M'r Commissioner Page's report, filed " at this term as an exhibit, marked 'E E,' as a stated account between " the said Frances and Thomas P. Devereux, deceased, conclusive of all " matters of account between them, both in respect to the $50,000 fund, " and the $3,000 annuity aforesaid, previous to and including the 22nd " day of June, 1846, excepting such matters of account as are, by the " express terms of the said paper-writing, saved out of its operation, for " future adjustment, by reference, or otherwise; ascertaining the bal- " ance due by the said Thomas P. to the said Frances, subject to the " exceptions and corrections last aforesaid, on the said 22nd day of June, " 1846, to be $29,664.60.

"6. That in taking said account, the master shall also regard the pa- " per-writing, made out some time in the latter part of the year 1847, " signed by Wm. D. Cooke, and accompanying Mr. Commissioner " Page's said report, as an exhibit, marked 'B B," as a stated account " between the said Frances and Thomas P. Devereux, deceased, con-

" clusive of all matters of account between them, in respect to the " $50,000 fund, and the $3,000 annuity aforesaid, and all other matters, " previous to and including the 21st day of June, 1847, saving such " matters of account as are, by the note at the foot of said paper-writing, " expressly excepted out of its operation, for future adjustment, by " reference, or otherwise; ascertaining the balance due by the said " Thomas P. to the said Frances, subject to the exceptions and correc- " tions last aforesaid, on the said 21st day of June, 1847, to be $25,036.97." (*Record, pp.* 183—184.)

The Plaintiffs waived a re-reference to the Master, for an account upon the basis of this decree, as unnecessary, and the account was forthwith corrected by the parties—Plaintiff and Defendant—according to the *opinion* therein expressed, and a *final decree* entered for the Plaintiffs, that they recover $722.14, against the Assignees in Bankruptcy of T. P. Devereux, deceased; from which final decree the Plaintiffs appealed to this Court, (*Record, pp.* 184, 185, 186).

ASSIGNMENT OF ERRORS.

There is error in this decision and decree: Because—

1. Under the circumstances of this case, T. P. Devereux was liable to account with the plaintiffs, as Frances Devereux' Executor, for *all* her personal assets:

2. Frances Devereux' will was an appointment of the *whole* of the $50,000 charged upon the land, conveyed to T. P. Devereux by Deed of July 3rd, 1839, to be *part of her general personal assets* in the hands of her Executors.

3. The instrument styled in the *Answer* of T. P. Devereux, "The Deed of Explanation," executed by Frances Devereux in 1845, (*Record, p.* 58; *Exhibit X with Answer of T. P. D., Record, p.* 72) was not effectual for any purpose; it was no *Deed;* it was *void;* it has no operative words of release or receipt; it was *presumptively* fraudulent for T. P. Devereux, a trustee, to take such an instrument from his *cestui que trust.* It cannot be used in this case even as *evidence* to correct the alleged mistake in the Deed of July 3rd, 1839; and it in no

manner affects the annnity of $3,000, so as to reduce the amount thereof.

4. Thos. P. Devereux, as Executor, ought to be charged with all *arrears* of the whole of the $3,000 annuity, created by the deed of July 3rd, 1839, charged on his land, which remained unexpended or unappointed by Frances Devereux at her death, as part of her personal assets, which were in his hands as her executor.

5. In taking the account of said Thos. P. Devereux as Executor, the paper writing, bearing date Oct. 20th, 1846, signed by Frances Devereux, (*Exhibit E E, with Mr. Com. Page's Report: Record, p.* 155,) which was not pleaded or set up in the Answer, ought not to be regarded as a *stated account,* CONCLUSIVE *of all matters of account between the said Thos. P. and the said Frances previous to and including the* 22*nd June,* 1846, the same being at most but a *receipt* or *admission* by said Frances, and affording only *evidence,* of no very great weight, under the circumstances proved before the master, of the matters therein admitted.

6. In taking the account of the said Thos. P. as Executor, the paper writing, bearing date in the year 1847, signed by Wm. D. Cooke, (*Exhibit B B, with Mr. Com. Page's Report; Record, pp.* 156–157,) which was not pleaded nor set up in the Answer, ought not to be regarded as a *stated account* CONCLUSIVE *of all matters of account between the said Thos. P. and the said Frances, previous to and including the* 21*st day of June,* 1847, the same being founded upon "E E," and at most, only an admission by the agent of Frances Devereux, never intended as a memorial of an *actual* accounting—nor founded upon an *actual* accounting by said Thos. P. Devereux.

ARGUMENT.

1. In a Court of Equity, under the facts and circumstances disclosed in this case, Thos. P. Devereux will be holden Executor of Frances Devereux, deceased, and will be required to account with the Plaintiffs, as two of her next of kin, for all of her personal assets which have come into his hands,

or under his control, which, in this instance, are, excluding the small amounts collected and expended by Whiting, while administrator *pendente lite*, the whole of her personal assets.

T. P. Devereux intermeddled with the assets, indeed substantially the whole of the assets were in his possession, were controlled and were disposed of by him from the date of Mrs. Devereux' death, until the final distribution of the residue of the same between himself and Bishop Polk in October, 1852, previous to the appointment of Whiting as Administrator with the will annexed, in November, 1852. When Whiting became such Administrator there were no longer any assets to be administered.

Mrs. Devereux died in June, 1849; Whiting was appointed Administrator *pendente lite* by the Probate Court of Wake County in August, 1849, when W. D. Cooke propounded therein her will for probate, and T. P. Devereux was the security upon his official bond. There was a *caveat* to the will by some of the heirs and next of kin, and the controversy respecting the probate thereof continued, first in the Probate Court, and afterwards in the Superior Court of Wake County, until November Term of the Probate Court, 1852, when the will was admitted to probate in the court last named, and Whiting was appointed by said court Administrator with the will annexed; and again T. P. Devereux became the surety on his official bond. The bulk of Mrs. Devereux' assets consisted of her negro slaves, more than sixty in number—the $50,000 charged upon T. P. Devereux' land —and the arrears of her annuity of $3,000, in like manner charged upon said land. During the whole of this period, which exceeded three years, it is not even pretended by Devereux in his answer, that he accounted with Whiting for the arrears of the annuity, or the $50,000 charge, or that he paid them or either of them to Whiting; nor is it pretended that the main body of the slaves, who were engaged as laborers on Mrs. Devereux' plantation in Bertie at the

time of her death, ever came into Whiting's possession, or were subject to his control.

From Whiting's two accounts, which were rendered to Devereux, and were never returned to the Probate Court, it appears that he sometimes hired out *Tom* and *Viny*, who were specifically bequeathed to the Presbyterian Church, and *Delia* and *Sally*, who were to be sold or otherwise disposed of, under specific directions set out in the will of the testatrix; but the main body of slaves, under directions contained in the will, remained in the possession of John Devereux (the son of T. P. D.) on the plantation in Bertie, and completed the crop for 1849 growing at Mrs. D.'s death (*Exhibits W. and K., Record, pp.* 87 *and* 88); and the next knowledge we have of them fifty-four of them are at T. P. Devereux' plantation on the Roanoke, and three of them are at his residence in the City of Raleigh (*Unlettered Exhibit with first amended answer, Record, pp.* 101 *and* 102); and Devereux divides them between himself and Bishop Polk, on the 7th day of October, 1852, (*Record, pp.* 101 *and* 102); and on the 13th of October, 1852, conveys Bishop Polk's share to Lucius C. Duncan as trustee for Mrs. Polk (*Exhibit O, Record, pp.* 95 *to* 97)—having already, on the 19th of July, 1852, taken assignments from said Polk and John Devereux of all their interest in said negro slaves (*Exhibits Q. and P., Record, pp.* 94 *and* 95); it is to be observed, that all these dealings with Mrs. Devereux' assets, until the final disposition of them as hereinbefore stated, were while Whiting was nominally her Administrator *pendente lite*, and before he was appointed her Administrator with the will annexed.

On the 29th August, 1851, the said Devereux took an assignment from the Presbyterian Church of Raleigh, of the slaves *Tom, Viny, Priscilla* and her three children *George, Henry* and *Robert*, (*Exhibit N., Record, p.* 94,) the negro slaves specifically bequeathed to that congregation by *Item 11th* of Mrs. Devereux' will, (*Record, p.* 48); the instrument of assignment does not disclose that any consideration was paid

therefor, nor is there any other evidence of a consideration therefor; the slave woman *Evelina* practically emancipated by *Item* 14*th* of the will, was taken into said Devereux' possession and left in Philadelphia, Pa., to effectuate that purpose during the same period of time preceding Whiting's appointment as Administrator with the will annexed, (*original answer; Record, pp.* 63 and 64.) The Defendant, (T. P. D.,) did not, in his original answer, make a full disclosure as to the division of the negroes between himself and Bishop Polk—it was excepted to for this reason among others—in his amended answers replying to said exceptions, (*Record, pp.* 100 and 104,) he *discovers* that transaction, and avers that the appointment of Whiting as Administrator with the will annexed, in November, 1852, was only formal, "*for the completion of said division by the sale of two negro slaves,*" * * "*and that not a single debt of the said Frances remained unpaid* "*at the date of the letters of administration with the will annexed,*" (*Record, p.* 101.) And one of the two negro slaves spoken of was purchased by Whiting himself—it is to be presumed not from himself, but from T. P. Devereux—and Whiting rendering an account to Devereux for the proceeds arising from said sales, (*Exhibit W. and K.; Record, pp.* 87 *and* 88;) or stating plainly the actual transaction, Devereux gave Whiting the slave woman for services rendered to him in winding up Mrs. Devereux' estate.

The Defendant (T. P. D.) frankly admits in his amended answer, that not a debt of the testatrix remained unpaid when Whiting was appointed Administrator with the will annexed—he might with equal truth have added, that out of the assets of Mrs. Devereux he had also discharged all her legacies; for in his answer, (*Record, pp.* 63 and 64,) he *discovers* how, during the same period, he had purchased in four of said legacies, (*Exhibits V., W., T., S.; Record, pp.* 89 to 91,) and had covenanted with the said Whiting to save him harmless against the claim of the Union Theological Seminary, the legacy to which he had then purchased, but

did not obtain a release for, until 1858, (*Answer; Record, p* 65; *Exhibit R.; Record, p.* 92.)

Nor is this all. In his Answer, (*Record, pp.* 61 *to* 64) the Defendant, T. P. Devereux, gives an account of the controversy in the different courts of North Carolina, respecting the probate of Mrs. Devereux' will, and of Whiting's manner of dealing with her assets while he was administrator *pendente lite;* and he supports the same with unlettered exhibits containing transcripts of the record of the proceedings in said courts, (*Record, pp.* 77 *to* 87;) and with Exhibits W and K and L, (*Record, pp.* 87–88, 97–98,) containing Whiting's accounts and the records of his appointment as Administrator. From this answer—from these Exhibits—from the vouchers and other evidence offered before the master when the account herein was taken—it appears that the debts due by the Testatrix were presented by Whiting to Devereux, and paid by the checks of the latter; that from time to time Whiting accounted with *him*, and paid over to *him*, any balances of the Testatrix' assets which might remain in his hands; that Whiting obtained moneys from *him* to pay the debts of his Testatrix; that in all Whiting's actings and doings Devereux directed him, and Whiting obeyed *his* instructions, and in every respect acted as *his* agent in the execution of his duties as administrator *pedente lite.*

It further appears, that in July, 1852, while the controversy respecting the probate of the will was pending in the Superior Court of Wake County, the said Devereux became the actor in said proceedings as the Executor of the Testatrix, assuming the affirmative of the issue of *devisasit vel non*, and then and there agreed to pay the costs of said controversy with her assets. After this issue was decided in the Superior Court in favor of the will of 1847, the *Procedendo* therefrom, transmitting the record to the Probate Court, directs the Court of Probate to qualify T. P. Devereux as Executor of said will. All this is of record; the Defendant, T. P. D., cannot be heard to contradict it. In August, 1852, in

pursuance of the Mandate received from said Superior Court, the Probate Court admitted the will of 1847 to probate, and caused it to be recorded. The pretended renunciation of the office of Executor, by the Defendant, T. P. D., in said Court, in November, 1852, and the then and there procuring Whiting to be appointed Administrator, with the will annexed—after the debts had been paid—after the legacies had been discharged—after the clear balance of assets had been appropriated by Devereux to his own use, and actually divided between himself and Bishop Polk—and when no assets remained to be administered—is, in a Court of Equity, at least, a bare nullity, and leaves T. P. Devereux liable to account as Executor of Frances Devereux for her assets, all of which he appears, by himself or his agents, to have received, and to have administered, or wasted, or converted to his own use.

So much would be true, even if there were no reason why the appointment of Whiting to be Administrator, with the will annexed, by the Probate Court, in this case, was *coram non judice* and absolutely void; but such appointment was absolutely and entirely invalid. It appears from the records already cited, that the only renunciations, (saving that of T. P. D.) made by the Executors named in the will were in the *Superior Court*, which had no jurisdiction nor power to accept them. It appears, also, that only Nash and Cooke renounced *there*, and that Primrose did not. It further appears from the pleadings, that Nash and Primrose and Cooke were *still living* when Whiting attempted to qualify as Administrator in the Probate Court in November, 1852; and until all the living Executors had renounced their right to the office, and such renunciation had been accepted by *that Court* it had no *power* to appoint an Administrator of the deceased. Such appointment was not only *voidable*, but absolutely and entirely *void* for all purposes. (*Wallis* v. *Wallis*, 1 Winst., 78; *Collins* v. *Turner*, N. C. Term, R. 105; *Mitchell* v. *Adams*, 1 Ired., 298; *Slade* v. *Washburn*, 3 Ired.,

557; *Hyman* v. *Gaskins*, 5 Ired., 267; *Springs* v. *Erwin*, 6 Ired., 27; *State* v. *White*, 7 Ired., 116.)

But whether the appointment of Whiting Administrator, with the will annexed, be void or not—under the state of facts disclosed by this record, a Court of Equity regards T P. Devereux as Executor of Mrs. Devereux, as having accepted his office as such Executor, and will compel him to account with the parties interested in the assets. The authorities to this effect are express and numerous: (1 *Williams on Exrs.*, 227–228; 2 *Ibid.*, 1,555; *Doyle* v. *Blake*, 2 Sch. & Lef., 230; *Rogers* v. *Frank*, 1 Yon. & Jer., 409; *Parsons* v. *Moyesden*, 1 Freem., 151; *Read* v. *Truelove*, 1 Ambl.; 517: *Mitchell* v. *Adams*, (*citing Doyle* v. *Blake*, *with approval*,) 1 Ired., 298).

Whiting died before this bill was filed; it was objected by the Defendant, (T. P. D.,) both by demurrer and his answer, that the suit was defectively constituted, because Whiting being dead, could not be made a party Defendant, and it was necessary to have another Administrator of Mrs. Devereux with the will annexed, appointed in his stead, so that her personal representative might be a party to this suit. *We* have insisted that T. P. Devereux was to be taken as her personal representative for all purposes—and especially in a suit in Equity. But if in this view we are mistaken, this defect in the original constitution of the suit has been cured during its progress, for the defendant, R. C. Badger, has been appointed Administrator of Frances Devereux *de bonis non* with the will annexed, and has been made a party Defendant, (*Record, pp.* 113 to 115.)

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2. Mrs. Devereux' will was an appointment of the *whole* of the $50,000 charged upon the land conveyed to T. P. D. by deed of July 3rd, 1839, *to be part of her general personal assets*, in the hands of her Executors.

The Court below *held*, that this fund was not appointed by

Mrs. Devereux in her will, to be part of her general personal assets in the hands of her Executors; nor was *any part* of said fund appointed, unless it was necessary to resort to the same to pay off the pecuniary legacies bequeathed by her, after exhausting for that purpose her general personal assets. As her general personal assets have proved sufficent to pay her debts, her funeral and testamentary expenses, and all her pecuniary bequests,—the result is, that, notwithstanding in the introductory clause of her will, she declares her intention "*thereby*" to appoint this fund, the Court holds she has not appointed the same, nor any part thereof, (*Record, p.* 183). This is a singular result. Her *intention* to execute her power cannot be questioned—she has delared it in the most explicit language; her intention to execute her power *by that very instrument*, to-wit, her will, cannot be doubted—she has declared this also: under our system of jurisprudence, the two paramount rules for the construction of a written instrument are: 1st, that it shall, if possible, be so interpreted, *ut res magis valeat quam pereat:* and 2dly, that such a meaning shall be given to it, as may carry out and effectuate to the fullest extent the intention of the parties. (Broom's Leg. Max. 521). In our case no technical rules of law intervene to restrict these maxims, and the instrument which we claim executes the power is a will—so executed as to conform in all respects to the forms, conditions and qualifications prescribed for the donee of the power, by the deed of July 3rd, 1839, (*Exhibit A., Record*, p. 40): and yet it is *held* that the will is not operative *at all* as an execution of the power, and that the known and expressed intention of the testatrix cannot be effectuated by the courts. We have been unable to find any authority to sustain this decision, and we believe that there is no instance on record, where the donee of a power has declared, in express terms, in the introductory clause of an instrument, executed in all respects in conformity with the requirements prescribed by the creator of the power, the intention thereby to execute

the power, in which the courts have not found a way to make the instrument operate as an effectual execution of the power. In *Roe dem Wilkinson* v. *Tranmar* (Wills' R. 684), *Lord Chief Justice Wills* says: "In the case of *Crossing* " v. *Scudamore* (2 Lev. 9), which I shall mention more par- " ticularly by and by, *Lord Ch. J. Hale* cites the opinion of " *Lord Hobart* in *fo.* 277, and declares himself to be of the " same opinion, that the Judges ought to be curious and " *subtle* (*Lord Hobart* used the word *astute*) to invent reasons " and means to make acts effectual according to the just in- " tention of the parties." Courts of law lean in favor of the execution of a power. (*Warner et ux* v. *Howell et ux*, 3 *Wash. C. C. R.* 12; *Lippet* v. *Hopkins*, 1 *Gall.* 454; *Archer* v. *Deneale*, 1 *Peters*, 558; *Bullard* v. *Goffe*, 20 *Pick.* 258). The policy of the law in modern times, and in our own country, is to introduce liberal rules of construction to clear away technical rubbish, and to diminish the interval which separates real and personal property; and, in view of the number of instances where the *intention* has been defeated by the rule distinguishing *power* from *property*, modern courts and modern legislatures have united in the effort to do away with this distinction.

The appellants' case turns mainly upon the point now under consideration, viz: the due execution of her power of appointment by Mrs. Devereux—a question which rarely occurs in our jurisprudence; and the main part of our argument will be directed to the investigation of this question. The question also arises in an unusual shape, for it is rarely the case that a point *can* be made as to the full execution of a power, where the donee of the power, in the introductory clause of the instrument of execution, *expressly* declares the *intention thereby* to exercise it. We doubt if even a *single* case of this character can be cited.

The *mode* in which the power has been exercised is, by all parties, admitted to be in all respects unexceptionable. No question is made as to the *manner* of executing it. It is con-

ceded that Mrs. Devereux' will was made and published with all the solemnities required by the deed of July 3rd, 1839, which created the power. We are, therefore, spared the necessity of examining those cases which determine whether the power has been executed by the instrument, in the mode and under the conditions prescribed at its creation.

The mode and instrument prescribed having been complied with, the question is, did Mrs. Devereux, by her will, *actually appoint* the fund of $50,000, which she reserved to herself the right to appoint, and charged upon *her* lands, when she conveyed them to her son, Thos. P. Devereux, by the deed of July 3rd, 1839. And note that the present controversy is between *volunteers*. T. P. Devereux was not a purchaser for value. Mrs. Devereux made a voluntary settlement of her own estate. The Plaintiffs are only her next of kin, and we freely concede, that unless there has been, not only an *intention* to appoint, but also an *actual* appointment of the $50,000 fund, and that made in the *precise form* required by the power, then the charge has lapsed for the benefit of T. P. Devereux, and the fund remains unappointed. But we do contend that the question of *actual* appointment depends almost altogether upon Mrs. Devereux' *intention* as expressed in and derived from the language and objects of her will.

Ever since (*Perrin* v. *Blake*, 4 Bur. 2,579; *Fearne on Rem., by Butler*, 9 Edtn., 156) it has been settled in our law that the intention of the testator, as gathered *ex visceribus testamenti*, was to be followed in the interpretation of devises and bequests, and was to prevail over the technical construction of law given to certain phrases. In construing a will it has been said that the intention of the testator is the polar star, by which the Court should be guided, provided no rule of law is thereby infringed, (*Broom's Leg. Max.*, 534;) and set phrases are controlled by, and do not control, that intention, when clearly expressed or otherwise positively ascertained.

Similar doctrines now generally prevail in regard to the

execution of powers, and especially in regard to their execution by last wills and testaments. The main point is to arrive at the intention and object of the donee of the power in the instrument of execution; and that being once ascertained effect is given to it accordingly, (*Bennett* v. *Aburrow*, 8 Ves., 616; *Blagge* v. *Miles*, 1 Sto. Rep., 445, 446). All the authorities agree that it is not necessary that the intention to execute the power should appear by *express* terms or recitals in the instrument. That intention, however manifested, whether directly or indirectly, positively or by just implication, will make the execution valid and operative. But no indirect or implied manifestotion of intention can be so strong as an *express* recital, in the introductory clause of a will, of the *intention thereby to execute the specific power.*

The foregoing remarks apply even when the power is created by an instrument resting on a valuable consideration, and touches an estate which was never owned by the creator of the power; but where a person makes a *voluntary* settlement of his *own* estate, and reserves a power to himself to charge the same, both the power and the instrument of appointment will be *liberally* construed, and the courts will be anxious to seize on any words which may be deemed an execution of the power; and our case comes strictly within this principle, (*Sug. on Pow.*, 6 Eng. Edtn, 428; *Maddison* v. *Andrew*, 1 Ves. Sr., 61; *Oke* v. *Heath*, 1 Ves. Sr., 139; *Churchill* v. *Dibden*. 2 Lord Keny, Rep., 2nd Pt., 68.)

Ordinarily three classes of cases have been held to be sufficient demonstrations of an intended execution of a power even when no *express* recital of an intention to execute it is contained in the instrument:

(1.) Where there has been some reference in the will or other instrument to the power;

(2.) Or a reference to the property, which is the subject on which it is to be executed:

(3.) Or where the provision in the will or other instrument, executed by the donee of the power, would otherwise

be in effectual or a mere nullity; in other words, it would have no operation, except as an execution of the power.

It is unnecessary to refer at large to the cases which establish these propositions—they are familiar learning to this Court, and constituted the law upon this subject in England until *Stat* 1, *Vic.*, c. 26, s. 27, and in North Carolina until *Act* 1844–5, *c.* 88, *s.* 5; *Rev. Code N. C.*, *c.* 119, *s.* 8; and they may be found collected in the text-books and leading cases now cited: (*Chance on Pow.*, *Vol.* 2, *ch.* 13, *secs.* 1,591 *to* 1,714; *Sug. on Pow.*, *6th Eng. Edtn.*, *Vol.* 1, *ch.* 6, *sec.* 2, *p.* 257, *&c.*; *Ib.*, *sec.* 7, *p* 373, *&c.*; *Ib.*, *sec.* 8, *p.* 430, *&c.*; *Doe d Nowell* v. *Roake*, 2 Bing. 497; 9 E. C. L. R., 496; 5 B. & Cress 720; 12 E. C. L. R., 363; 6 Bing., 475; 19 E. C. L. R., 139; 4 Bligh, 17; *Blagge* v. *Miles*, 1 Sto. Rep., 426.)

Therefore—before *Stat.*, *Vic.*, *s.* 26, *c.* 27—our *Act* 1844–5, *c.* 88, *s.* 5, whereby it was in substance provided, that real and personal property, over which a testator has a power of appointment, shall pass by a general devise or bequest, unless a contrary intention shall appear, and of which statutes we shall have something to say presently—ordinarily a devise or bequest in general terms did not operate as an execution of a power of appointment over real or personal estate; for in the case of Wills, as well as of other instruments, it was the settled rule, than in respect to the execution of a power there must be a reference to the subject of it or to the power itself, unless in a case in which the Will would be inoperative without the aid of the power. But though the Will did not refer to the power, nor to the subject of it, yet it would operate as an appointment under the power, no matter how general the devise, if it could have no operation without the power. This last rule of construction gave rise to a distinction between real and personal estate. Every devise of real estate is *specific*, hence in ascertaining whether the devise of real estate is the execution of a power, the point depended on the fact whether there was any other subject for its operation; thus, if a testator devised all his *real estate*, and it ap-

peared that he had *no* real estate at the time of the execution of his will, but that he had a general *testamentary power* over real estate, the devise would operate as an *appointment under such power*. This ruling was based upon the presumed *intention* of the testator; the Court would, therefore, go outside of the will to inquire whether the testator had real estate other than that subject to the power, wherewith to satisfy the terms of the will, and if he had no other real estate would presume that the testator had that specific land which was the subject of the power, in his view when he made his will, and *intended* thereby to exercise his power of appointing it. But it is obvious that the ground on which a general devise was held to operate as an appointment of real estate does not apply to personalty; for as a will of personal estate comprises whatever property of this description a testator dies possessed of, without regard to the period of its acquisition, it is not necessarily to be presumed that the testator had *any* specific personal property in his view when he made his will, and, therefore, even if it should happen that the testator had no other disposable personal property, at the time of making his will or at his death, than the subject of the power, and that its exclusion from the will would leave nothing for it to operate upon, still the will did not operate as an appointment under the power. The courts would not inquire whether the testator had other personal property to satisfy the terms of the will, for it was immaterial. The possibility that the testator might contemplate property to be acquired after making his will, prevented a *general* disposition from operating as an execution of a power over personal property, although, at the time of making the will, he had no property on which it could take effect, (1 *Jarmon on Wills*, 4 *Am. edtn., pp.* 554 to 558; *marginal pages* 628 *to* 632, *and the cases there cited*). But even where the subject of the power was personal property, if an intention to exercise a power by a general or residuary bequest could be collected by implication from the whole instrument, such con-

struction would prevail, (1 *Jarmon on Wills, p.* 557, *m. p.* 631.)

It will thus be perceived, that before the recent changes in the law above referred to, it being admitted that the instrument alleged to be an execution of the power, had been made in the form, and with all the solemnities required by the creator of the power, the question before the Courts was almost universally only to ascertain the *intention* and *object* of the donee of the power in executing the instrument—in other words—whether it was his *intention* by that instrument to exercise his power of appointment. If in the instrument itself, he *expressly recited his intention to execute the power of that instrument*—no question of construction was left for the Court, but only the duty, to so interpret the instrument, as to carry out the ascertained intention of its maker, by making it an effectual execution of the power, and of the whole power of appointment, unless some positive rule of law intervened to prevent. But if the intent to execute the power was not *expressed*, then the instrument was searched by the Court for implied evidence of an intention to execute it, and if upon such search, it was ascertained that the will (e. g.) referred to the power, or to the subject of it, or that its words could not be satisfied, without supposing an intent to execute the power—then the Courts held the power to be executed, *but only to the extent* that it, or the subject of it, was so referred to, or to the extent, that it was necessary to execute it, to prevent the will from being a nullity. Cases cited for the appellees, wherein the Courts have held that the appointment was only partial, because the reference to the power, or the subject of it, only indicated an intention to execute the power in part—or because the words of the will could be satisfied upon the assumption of an intention by the testator to execute his power in part—*there being no express recital in the instrument of execution by the intention to exercise the power thereby:* are no authorities against our position—that Mrs. Devereux has, by her will—*in the initial clause of which she expresses the in-*

tention thereby to execute that specific power—appointed the *whole* of the $50,000, charged on the land conveyed to T. P. Devereux by the deed of July 3rd, 1839, to be part of her general personal assets in the hands of her Executors. And this was the class of cases cited in the court below, which we believe are the only ones which can be adduced for the appellees.

We have found a single case, in which a will *is expressed to be made in pursuance of a power*, in which its limitations were not construed to be an execution of the power, (*Lawson* v. *Lawson*, 3 Br. C. C. 272). *Sir Edward Sugden* thus digests this case, (1 *Sug on Pow.* 381, sec. 14); "but, although a will "be expressed to be made in *pursuance of the power*, yet if "the testator appears to dispose of his own property only, "the power will not be executed by the will." This decision was on the ground, that it *expressly* appeared from the provisions of the will, that the testator *intended* to dispose of his *own* property *only*, and *did not intend* to dispose of the property of *his wife*, over which he had a power of appointment. Even of this case, *Sir Edward Sugden* says—"It "seems difficult to acquiesce in this decision"—and further on—"We learn that *Lord Thurlow*, although he expressed "an opinion on the case, did not decide the point," (1 *Sug. on Pow.*, 383, 384). In any conflict of authority, the great reputation of *Sir Edward Sugden*, (Lord St. Leonards,) and his profound investigations into this branch of the law, would give his opinion greater weight in our courts than that of the Judge, by whom the case in question was decided. The authority of *Lawson* v. *Lawson*, is greatly shaken by his observations. And it has been *hedl*, that, where the introductory words of a will purport that the will is made *only* by force of a power, *every clause in the will is to be referred to the power*, if that construction is necessary to effectuate the execution of the power, (1 *Sug. on Pow.* 381; *Monk* v. *Mawdsly*, 1 Sim. 286; 2 *Cond. Eng. Chan. Rep*, 144). The books will be searched in vain, for any case in which the

uary personal estate, (1 *Sug. on Pow.*, 6 Eng. ed., 560; *Goodens* v. *Lloyd*, 3 Sim., 538; 5 Cond. Eng. Ch. R., 238.)

Now, in our case, we have not only a reference to the power, an express recital in the initial clause of the will of an intention thereby to execute it, executors nominated, and pecuniary legacies given which were to be paid by the executors, but, as will appear from a careful examination of the whole context of the will, it was clearly the intention of the testatrix that none of these pecuniary legacies, amounting together to near $28,000, (save one, of which special mention will be made hereafter,) should be paid by her executors with any *other* part of her personal property *than* the $50,000 fund, which she had appointed to them as part of her personal assets, and so a direction, by the strongest possible *implication*, that such pecuniary legacies *were to be paid by her executors out of the* $50,000 *fund which she had already appointed to them.*

We rely upon the 7th, 9th, 10th and 16th items of the will (*Record, pp.* 47, 48 *and* 49) to establish this position, which items are as follows:

"*Item 7th.* It is my will that all my negroes, who at the time of my "death shall be in the possession of my grandson, John Devereux in "Bertie County, shall be kept together after my death until they have "secured the crop on the ground at that p riod. At the expiration of "that time my highly-esteemed son-in-law, Rt. Reverend Leonidas Polk, "is to select as many families of said negroes as he wishes. These he is "to take at a valuation, giving bonds for the same, payable in ten equal "annual instalments; but as I know he is at a great expense to promote "the spiritual improvement of his slaves, I desire the expense attending "their removal to be paid by my estate. Should John Devereux take any "of said negroes, the same terms will be required as in the case of Leon-"idas Polk.

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"*Item 9th.* It is my will that the house and lot in Chapel Hill, pur-"chased of Sidney Barber, be disposed of as my executors may deem "best. If sold upon credit, a mortgage must be taken upon the prop-"erty until payment is made, which payment is to be vested in some "productive stock.

"*Item 10th.* From the funds arising from the sale of the above slaves

"and the house and lot in Chapel Hill, it is my will that at the death of "Mrs. Eliza Taylor, her daughter Louisa shall receive the further sum "of one hundred and fifty dollars annually during her natural life.

* * * * * * * * * * * *

"*Item* 16*th*. Should my debts, at my decease, not exceed two thou- "sand dollars, I give my carriage and horses to my beloved son Thomas "P. Devereux; if otherwise, it is my will and desire that my executors "should sell all the stock of horses, cattle, hogs, &c., crops and farming "utensils and any personal property I may have in the possession of my "grandson, John Devereux, (negroes excepted;) also my carriage and "wagon, or any other property of the same description, and pay all my "debts; and should the said property be found insufficient to pay the "debts, then it is my will and desire that the negroes which may be in "the possession of my grandson, John Devereux, at the time of my "death, shall be hired out, and the proceeds applied to the payment of "the balance until the same shall be fully paid and satisfied, unless my "grandson and son-in-law should arrange the payment of the same in "some other manner, and take the negroes into their possession.

"Should it appear at my decease that the bequests exceed the amount "of funds left, my will is that the first five only shall be curtailed until "brought within the limits of the assets.

"It is my further will and desire, and I do so direct and appoint, that "if any one or more of the legacies hereinbefore given or intended to be "given by me, should fail to take effect through any informality, or "from any other cause, that then the sum so failing shall be added to "and form a part of, the other legacies which shall be lawful and valid."

Let it be kept in mind, that with the exception of some household and kitchen furniture at her residence in the city of Raleigh, the testatrix had no *property* except the house and lot in Chapel Hill, her negro slaves, and the crop, stock, farming utensils, and the like, on her plantation in Bertie; and also, that by the North Carolina statute, every will shall be construed with reference to the real and personal estate comprised therein, to speak and take effect as if it had been executed *immediately before the death of the testator*, unless a contrary intention shall appear by the will, (*Rev. Code N. C.*, *c.* 119, *s.* 6, *p.* 608; and finally, that, while we cannot show by extrinsic evidence the motives and intention of the testatrix, yet in construing her will to ascertain its meaning the courts are at liberty to consider the circumstances of her es-

tate, so far as is necessary, to put themselves in the situation of the testatrix at the time, with reference to which her will speaks and takes effect, (*Bivens* v. *Phifer*, 2 Jones, 436; *Woods* v. *Woods*, 2 Jones Eq., 420); and the conclusion is inevitable that the maker of this will intended that her executors should pay the pecuniary legacies bequeathed thereby out of the $50,000 fund which she had already appointed to them as part of her personal assets. Her debts (*Item* 16*th*) were to be paid by the sale of her horses, cattle, hogs, crops, farming utensils, &c., and with the *hires* of her negro slaves, if necessary. Her house and lot in Chapel Hill (*Item* 9*th*) was to be sold on a credit, a mortage taken until payment, and the proceeds to be *invested* in *some productive stock*. Her negro slaves (*Item* 7*th*) were to be sold on a long credit, part of it extending to ten years, to particular persons named by her, so that the fund arising from this source could not be made available by her executors for the payment of the pecuniary legacies bequeathed to charities, most of which legacies were to bear interest immediately. After thus making a specific disposition of all her *property*, whereby she indicated an intention that no part of it should be applied by her executors to the payment of her pecuniary legacies, she adopts, with respect to *their* payment, this peculiar and significant language, (*Item* 16*th*:) "*Should it appear at my decease* " *that the bequests exceed the amount of funds left, my will is,* " *that the first five only shall be curtailed until brought within the* " *limits of the assets.*" And finally, as if to exclude any *possible* construction, whereby her *other* pecuniary legacies might be held payable out of the proceeds of the sales of the negro slaves, and of the house and lot in Chapel Hill, she, in *Item* 16*th*, *expressly* directs that the *one* pecuniary legacy thereby given shall be paid "*from the funds arising from the* " *sale of the above slaves and the house and lot in Chapel Hill:*" *suggestio unius est exclusio alterius.*

If our above conclusion is sound, viz: that the testatrix intended to appoint the fund of $50,000 to her Executors

for the payment of her pecuniary legacies—then the whole question upon this point is narrowed down to the mere consideration, whether Mrs. Devereux intended only a *partial* execution of the power to the extent that was necessary for the discharge of these legacies, or meant a full and entire execution of the whole power over all the property to which it was attached. We shall discuss this question, in another connection, later in our argument—when we think we shall demonstrate both by reason and authority, that the whole power over all the fund was executed; but if the fund was only *partially* appointed for the payment of the pecuniary legacies, there was error in the decision of the Court below, whereby the Plaintiffs were endamaged; for the decision of the Court charged the pecuniary legacies *against the general personal assets*, and thereby reduced by the amount of such legacies, the clear residue in the hands of the Executor, to one-third of which residue the Plaintiffs are entitled.

Hitherto, we have argued our case without calling to our aid the N. C. Act of 1844-'5, c. 88, s. 5; Rev. Code of N. C., c. 119, s. 8, p. 608—which was in force when Mrs. Devereux made and published her will, and which is identical with the English Statute, 1 Vic., c. 26, s. 27. *Sir Edward Sugden*, in the 6th London edition of his work upon powers, (of which there is an American re-print among the volumes of the *Law Library*) after a careful and elaborate citation and examination of the English cases, which relate to the question—*What amounts to the execution of a power where the donee has not an interest in the estate*, (Vol. 1, pp. 373 to 419)—proceeds (pp. 419 to 429) to review and criticise the cases which he has cited and examined, and says: "*In reviewing the* "*cases in this section, it is impossible not to be struck with the* "*number of instances where the intention has been defeated by the* "*rule distinguishing power from property, and it has occurred to*

" *some that it requires a legislative remedy,*" (p. 419.) This suggestion of the great author on the subject of Powers, was followed by the English Statute, 1 *Vic., c.* 26, *s.* 27, of which our Act 1844–'5, *Rev. Code of N. C.*, c. 119, s. 8, p. 608, is an exact and literal copy. The language is as follows: "A general " devise of the real estate of the testator, or of his real estate " in any place or in the occupation of any person mentioned " in the will, or otherwise described in a general manner, " shall be construed to include any real estate, or any real " estate to which such description shall extend, (as the case " may be), which he may have power to appoint in any " manner he may think proper; and shall operate as an " execution of such power, unless a contrary intention shall " appear by the will: and in like manner a bequest of per- " sonal estate of the testator, or any bequest of personal pro- " perty, described in a general manner, shall be construed " to include any personal estate, or any personal estate to " which such description shall extend, (as the case may be), " which he may have power to appoint in any manner he " may think proper, and shall operate as an execution of " such power, unless a contrary intention shall appear by " the will." *In Re Wilkinson*, (L. R., 4 Ch., Ap. Cas., 589–590), *Sir C. J. Selwyn, L. J.*, after citing the language of 1 *Vic*, c. 26, *s.* 27, says: " *The enactment was intended to get rid of the* " *difference between power and property, and to make it unneces-* " *sary in framing a will to refer to the instrument creating the* " *power, or to the actual subject of the power.*" And it was held in that case, affirming the order of *Stewart, V. C.*, that— " *Where a testatrix has a general power of appointment over sums* " *of money, a bequest by her of pecuniary legacies operates as an* " *execution of the power under* 1 *Vic., c.* 26, *s.* 27." So far as our researches extend, it has not yet been decided, that an appointment of an Executor *without more*, would, under said *Statute*, make the fund subject to the power of appointment, assets in his hands. But if the will, in its initial clause, *expressly recites the power, and declares the intention to exercise it*

by that instrument, we insist that the appointment of an Executor only, would, in view of the purpose and object of the statute, make the fund general assets in the hands of the Executor, even if no such operation would have been given to a will made and published before the enactment. It is true, in our case, the testatrix does not say of the $50,000 charge, in so many words—"*I appoint to my Executor as part of my personal estate*," but she does what is equivalent—she declares, in the first words of her will, her intention, thereby, to exercise and execute the *specific* power reserved by her, to herself, over her own estate, in the deed of July 3rd, 1839. What was that power? It was to appoint a fund of $50,000 charged upon the land conveyed to T. P. Devereux. The testatrix, then, declares her intention, *by her will, to appoint the* $50,000 *charged upon the land conveyed to T. P. Devereux*. To appoint it to whom? She names no other person, but she does name her Executors, and proceeds with her will, from and after the first clause, without again making any distinction, between her *property and estate*, and the *fund over which she has the power of appointment; treating it all, in one mass, as one property, to be dealt with as her will directs.*

Hayes v. *Oatley* (L. R. 14 Eq., Cas. 1,) is a strong authority for our view: A wife had a power of appointment over a fund of £10,000 settled in the hands of trustees, and secured by mortgage. By her will she directed that her husband should enjoy the income of the fund during his life; she directed legacies amounting to £5,000 to be paid after the death of her husband, with one moiety of the fund, and she gave the other moiety of the fund and the residue of her property to her husband, whom she appointed her executor. The trustees of the settlement paid over *the whole* of the trust fund to the husband as executor, and part of the £5,000 applicable to the payment of the pecuniary legacies was retained by the executor, and by reason of his insolvency was subsequently lost. The suit was instituted by the legatees entitled after the death of the husband, against the trustees of

the settlement, to compel them to make good the sum which had been lost, upon the ground that they ought not to have paid the £5,000 to the executor, and that the effect of the will was not to appoint the *whole* fund to the husband as executor. The court held that the whole fund was held on the trusts of the will; that the executor was the person to carry them into effect, and not the trustees of the original settlement; that the effect of the will was to appoint the fund to the husband *as executor*. *Lord Romilly M. R.*, said, "I en- " tertain no doubt that the trusts of the settlement were " completely discharged when the trustees paid over the " £10,000 to the executor of Mrs. *Stubbs*. If it were not so " the trustees would have to carry into effect all the limita- " tions of her will."

In *Wilday* v. *Barnett*, (L. R., 6 Eq., Cas. 193), the testatrix, who was a *feme sole*, made no mention in her will of her power, nor of the subject matter of it, (which was personalty), and had other assets besides the fund subject to her power of appointment, but because she named an executor, directed him to pay her just debts and funeral and testamentary expenses out of her *personal estate*, gave several pecuniary legacies which she directed should abate rateably, if there should not be sufficient to pay them after paying her debts and funeral and testamentary expenses, and gave "all the rest and residue of my *estate* and *effects* whatsoever" to three of her nephews, equally—the court *held*, under 1 *Vic.*, *c.* 26, *s.* 27, " that *the will operated as an execution of the* " *power in favor of the executor, for the purpose of paying the testa-* " *trix's debts, funeral and testamentary expenses and legacies*, and " that only so much of the property, the subject of the " power, as remained after making those payments, passed " by the residuary bequest." The contention in the case last cited was between the *residuary legatees* and the executor representing the pecuniary legatees, the residuary legatees insisting that under Stat. 1 Vic., c. 26, s. 27, only the residuary clause of the will operated as an appointment; but

the court held that, under the statute, the whole fund was appointed to her executor as part of her general personal assets.

In *Brickenden* v. *Williams*, (L. R., 7 Eq., Cas. 310), the testatrix, who was a *feme covert*, and had a power of appointment over personalty, devised and bequeathed "*all the estate, "both real and personal, over which I have any disposing power,*" to her executors, whom she named. She then gave several pecuniary legacies, which did not exhaust the fund; she made no distinct reference either to her power or to the subject matter of it; she died in her husband's lifetime: *held*, that the fund was *all* appointed—that it was appointed *to her executor as part of her general personal estate,* "*and* HENCE "*that the unexhausted portion belonged to the husband, and not* "*to the persons entitled in default of appointment under the set-*"*tlement.*"

There are no North Carolina cases upon the construction of our *Act of* 1844–5, *c.* 88, *s.* 5; *Rev. Code, c.* 119, *s.* 8; but the cases in the English courts, since the enactment of a statute of exactly similar import, upon *its* interpretation and effect, in connection with the previous doctrines governing the execution of powers, which are cited above, are relied upon by us as establishing *conclusively* that Mrs. Devereux, by her will, appointed the *whole* of the $50,000 charged upon the land conveyed to T. P. Devereux by deed of July 3rd, 1839, to be part of her general personal assets in the hands of her executors.

We have now to consider the narrower question, the solution of which is suggested by the case of *Wilday* v. *Barnett*, cited *supra*, and to which we have already referred, viz: whether Mrs. Devereux' appointment of the $50,000 fund to her Executors, for the purpose of paying her pecuniary legacies, operated as a mere partial execution of her power

to the extent to which the fund subject to it was required to make the legacies effective, or was a full and entire appointment of the whole fund to be part of her personal estate for all purposes.

We submit, that even without reference to the Act of 1844–'5, c. 88, s. 5, and still more, having regard to that Act, the whole of the fund of $50,000 is appointed, and is made part of her general assets for all purposes.

In a late edition of his treatise on Powers, (8 *Lon. Edt'n, p.* 467)—*Lord St. Leonards* says: "Where there is a power to "appoint part of a settled fund, the execution of the power "takes the part appointed *entirely out of the settlement.* Al- "though, therefore, the *beneficial* interest in it is not in terms "immediately disposed of, yet there can be no resulting "trust *for the benefit of any person under the deed creating the* "*power;* for where the principal of the fund is appointed, it "must be considered as if it had never been comprised in "the trust, because it is absolutely taken out of it by the "execution of the power." And this *dictum* of *Lord St. Leonards* is cited with approval by the Court in *Brickenden* v. *Williams,* (*L. R.* 7 *Eq., Cas.* 315), and the case of *Easum* v. *Appleford,* (5 *My. & Cr.* 56), which is apparently, at first view, not quite consistent with it, is explained and distinguished, on the ground—that upon the construction of the whole will, in the latter case, it *affirmatively* appeared that the testator did *not* intend to make the fund part of her general estate. That is the conclusion at which *Lord Chancellor Cottenham,* arrived, *upon the construction of that will.* As was declared by *Sir W. M. James V. C.,* in *Wilkinson* v. *Schneider,* (*L. R.* 9 *Eq. Cas.* 430), the question usually is not one of *intention* at all; the *expressed intention* of the will is that the whole fund shall go to the Executors for the payment of debts and legacies, and if it is not exhausted in their discharge, the question is one of *resulting trust.* There is an absolute severance of the fund. That is appointed to the Executors, and taken away entirely from under the settle-

ment, so far as the appointor can do so. The Executors cannot take beneficially, they are but trustees. There is no equity between the persons entitled under the settlement, and the Executors—and *they* cannot keep the fund for themselves. The *Vice Chancellor* concludes by saying: "I "think a resulting trust must be a resulting trust always "for the creator of the settlement—the conveyor and dis- "poner of the property. The resulting trust here must be "for the persons who would be entitled if this were the ap- "pointor's property." And in that case it was *held*, that a pecuniary legacy given out of a fund appointed to Executors, which *lapsed* by the death of the legatee during the lifetime of the testatrix—did not pass by the residuary clause of the will, under 1 *Vic. c.* 26, *s.* 27, "that the share "of the fund which lapsed passed to the *next of kin of the tes-* "*tatrix*, and not to the persons interested in default of ap- "pointment under the settlement."

Under the old law, in England, the Executor took *beneficially* the residue not expressly disposed of; under the provisions of *Stat.* 1 *Will* 4, *c.* 40, in England—and probably *always* in N. C., certainly ever since the *Act of* 1789, c. 368, s. 2, (*Ralston* v. *Telfair*, 2 Dev. Eq., 255)—the residue not expressly disposed of is held by the Executor as trustee for the next of kin; but in England, even *before Stat. Will* 4, *c.* 40, where the residue was bequeathed to an Executor *upon trusts* which did not exhaust the property, he was held to be a trustee of the unexhausted portion *for the next of kin*, (*Dawson* v. *Clark*, 15 Ves. 409; 18 Ves. 247; *King* v. *Denison*, 1 V. & B., 260). The only question here is, whether this doctrine is equally applicable, where the gifts which do not exhaust the fund are by way of appointment. We maintain that it does equally apply; and the result of any other ruling would be, that the power might be wholly or partially exercised, according to the state of the testator's property at his death, which is contrary to the settled doctrine, that where an appointment is made by will, for purposes

which do not exhaust the fund, the surplus is not unappointed, but falls into the residue of the testator's estate. In *Wilday* v. *Barnett*, (L. R., 6 Eq. Cas. 196), *Mr. Bathurst*, in his argument, relied upon the proposition just stated as *settled law; Lord Romilly M. R.*, in delivering his opinion, said:—"I assent to *Mr. Bathurst's* argument, that the will "must, if it operates as an execution of the power at all, "operate as an appointment of the whole fund," (*p.* 197). The cases are numerous, and they amount to this: if the donee of a power to appoint a fund, either expressly or by implication, appoints it to his Executors, thereupon the Executors take it as a part of the *property* of the appointor, and as in that character they do not take it beneficially, they take it in trust, that is, first to pay the creditors, and then the legatees, and if there are no legatees, or the legacies do not exhaust the fund, then in trust for the next of kin of the appointor. (*Chamberlain* v. *Hutchinson*, 22 Beav. 444; *Lefevre* v. *Freeland*, 24 Beav. 403; *Wilday* v. *Barnett*, L. R. 6 Eq. Cas. 193; *Brickenden* v. *Willians*, L. R. 7 Eq. Cas. 310; *Wilkinson* v. *Schneider*, L. R. 9 Eq. Cas. 423; *In Re Wilkinson*, L. R. 4 Ch. Ap. Cas. 587; *Att'y. Gen'l.* v. *Brackenbury*, 32 L. J. (Ex.) 107; *Lord St. Leonards on Powers*, 8 Lon. edt'n., 467.)

Our conclusion is, that Mrs. Devereux' will was an appointment of the *whole* of the $50,000 charged upon the land conveyed to T. P. Devereux by deed of July 3rd, 1839, to be *part of her general personal assets*, in the hands of her Executors; and if it is not exhausted in the payment of her debts, and funeral and testamentary expenses, and in the discharge of her pecuniary bequests, what remains falls into the residue of her personal estate—and, there being no residuary legatee, swells that fund, to one-third of which the *feme* Plaintiffs, representing their father, George Devereux, deceased, are entitled as two of her next of kin.

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3. The instrument styled "*The Deed of Explanation*," bear-

ing date in the year 1845, (*Record*, p. 58; *Exhibit X with answer of T. P. D., Record*, p. 72), was not effectual for any purpose; and it in no manner affects or reduces the $3,000 *per annum* by the deed of 3rd July, 1839, agreed to be paid by Thos. P. Devereux, on the 1st day of March in each and every year during her life, to Frances Devereux for her sole and separate use, and by said deed charged upon the land thereby conveyed to T. P. Devereux.

In his answer (*Record*, p. 58), T. P. Devereux says:

"This defendant saith that he submits upon the proper construction "of the two deeds A and Z, that it is somewhat doubtful whether the "yearly reservation of $3,000 was not intended to be a stipulation for "the annual payment of the interest upon the sum of $50,000 by this "defendant to the said Frances; but, however this may be, this defen- "dant saith that the said Frances so intended it; and, if otherwise ex- "pressed, it was a mistake in the draft of said deed. For he saith that, "after the death of the said John, her husband, viz., in the year 1845, "the said Frances sent for a most respectable counsellor at law, and di- "rected a deed to be drawn correcting the said mistake, a copy of which "deed, marked "X," this defendant hath filed with this answer, and "prays to be taken as a part thereof; the original of which is in the "possession of this defendant, and will be produced when required by "this honorable court. And this defendant saith that he believes the "existence of the said deed of correction was well known to the plain- "tiff Frank before the filing of said bill of complaint."

The Exhibit referred to as X, (*Record*, p. 72), is as follows:

"State of North Carolina. To all people to whom these presents shal come:

"Frances Devereux, of the city of Raleigh, in the said State, relict of "John Devereux, late of the said city, sendeth greeting. Whereas by "deeds dated in the month of July, 1839, a settlement was made by the "said Frances, by and with the advice and consent of her said husband, "of certain estates, both real and personal, then late the property of "George Pollok, deceased, to which the said Frances had succeeded; "and whereas in and by the same the sum of fifty thousand dollars was "secured to the said Frances, together with an annuity of three thousand "dollars; and whereas the annuity was by the said Frances understood "to be the interest of the said sum of fifty thousand dollars, and not in "addition thereto, and was to abate as the principal of the said sum was

" from time to time paid; and whereas doubts have arisen whether the " said deed may not bear a contrary construction, and the said annuity " be chargeable on the said estate over and above the said fifty thousand " dollars:

" Now, these presents are to declare that the true meaning and intent " of the part of the said settlement above referred to is, that the sum of " fifty thousand dollars, with the annual interest thereon, was to be " hereby reserved to the said Frances, and that the said interest was to " cease pto rata as portions of the said principal sum were from time to " time paid and discharged, in the same manner as if the same was a debt " due by the said estate, and that no annuity except the said interest was " intended to be reserved by the said settlement to the said Frances.

" In testimony whereof the said Frances hath hereunto set her hand " and affixed her seal this day of in the year one thousand eight " hundred and forty-five.

" FRANCES DEVEREUX, [SEAL.]"

" Signed, sealed, and delivered in presence of—
JAMES IREDELL."

We have been unable to see in what respect Exhibit Z (*Record, p.* 68) with the defendant Devereux' answer affects or modifies the language of Exhibit A (*Record, p.* 40) filed with the original bill; and the language of the latter—being the deed bearing date July 3rd, 1839, and executed by John Devereux and Frances, his wife, of the one part, and the said Thos. P. Devereux of the other part, conveying the Pollok lands to the said T. P. Devereux—in reference to the $3,000 annuity and the $50,000 charge, is so exceedingly clear, distinct and impossible of misapprehension that we shall not occupy the time of the court in pressing the argument that it is *not* "somewhat doubtful whether the yearly reservation " of $3,000 was not intended to be a stipulation for the an- " nual payment of the interest upon the sum of $50,000 by " Thos. P. Devereux to Frances Devereux." No one can read the instrument and fail to arrive at the conclusion that the annual sum of $3,000, the first payment of which was to take place within less than a year after the execution of the instrument, was *not* intended to be the annual interest on the $50,000 charge, which it was agreed that Mrs. Devereux should have power to make upon the land, in another

clause of the same instrument, separated from the clause providing for the $3,000 annuity by an intervening clause containing a provision for the benefit of John Devereux; and that by the proper interpretation of the deed Mrs. Devereux might have appointed the whole of the $50,000 fund immediately after the deed was sealed and delivered, and yet have had the right, on the 1st day of March, 1840, and on the 1st day of March, in each and every year until her death in 1849, to have called upon T. P. Devereux for the annual sums of $3,000 each, amounting in the aggregate to $30,000. And the suggestion, of a *mistake* in the draft of a deed, effecting a family settlement of a family estate, drawn with the detail and executed with the deliberation manifest in this transaction, whereby said deed failed to conform to the real intention and agreement of *all* the parties thereto—and that such mistake was not discovered nor any attempt made to correct it until after one of the parties to the deed was dead and the period of six years had elapsed—indicates a state of facts so radically inconsistent with our ordinary experience of human affairs as to make it almost impossible seriously to entertain the proposition.

The *words* of the deed bind T. P. Devereux, under the circumstances which ensued, to pay Mrs. Devereux $3,000 *per annum* on the 1st day of March in each year for ten years. If he can escape from this liability it must be because Exhibit X operates, either in a court of law or a court of equity, to release or in some other manner to discharge him from his obligation or some part thereof; or because the defendant (T. P. D) can in this suit, by way of answer, and without filing a *cross-bill*, apply to the court to correct the deed of July 3d, 1839, for an alleged mistake therein, whereby it failed to conform to the real agreement of *all* the parties thereto—and can rely upon Exhibit X—the bare *declaration* of *one* of the parties to the instrument, made *six years after its execution*, by a *mother*—a widow—*nearly eighty years of age, to her*

eldest and only son, who was also her trustee, and in his interest, which declaration, so far as this record discloses, never saw the light until *ten* years after it was made, and then only *after suit* was instituted against the son and trustee for the settlement of his trust—as plenary evidence of the mistake and of the omitted terms whereby the correction is to be made. In short, this part of the defendant's case rests *entirely* upon Exhibit X.

What was the operation of the *alleged* deed, *called* in the answer *the deed of explanation*? Did it have any operation?

Did it discharge the liability for the annuity of $3,000 for ten years, or any part of that liability? Is it a release? Is it a receipt? It is made to no one; it does not purport to receipt for, discharge, release or acquit any one of anything. There is no evidence that it was ever delivered. *Daves* v. *Haywood*, 1 Jones Eq., 253. It bears date in 1845; John Devereux, the husband of Frances, diedin 1844; Mrs. Devereux died in 1849. T. P. Devereux had access to, and complete control of, all her property, effects and papers from her death until now. He first produced the paper as an exhibit with his answer in 1860; there is a replication to his answer; he offers no evidence when and how the instrument came into his possession, or that it was ever seen by any human eye save his and his mother's. The attesting witness is dead. At the most it is but a *declaration* made by Mrs. Devereux, in writing and under seal, of her *own*, and no one else's, legal opinion of the interpretation and operation of the deed executed in July, 1839, uttered six years after she signed the instrument, and when she was about seventy-six years old, (*Deposition of John Devereux, Record, p.* 144); and of her *own* and no other party's meaning and intention in executing the deed of settlement.

Exhibt X cannot have any *legal* operation: we submit that the only possible purpose for which it could be used in a *Court of Equity* would be, as *evidence* for the purpose of *correcting* the deed of 1839, upon the ground that it was er-

roneously framed, and did not embody the real intention and agreement—not of all the parties to that instrument—but of Mrs. Devereux, one of the parties—in a suit properly constituted for that purpose.

Now if such a suit were instituted, the subsequent admission *in pais* of one of the parties to a deed, that part of the real agreement of the parties was omitted from the instrument, or that terms were inserted therein, which constituted no part of the real agreement, are not evidence of that irrefragable character which is required in equity to vary the terms of a written instrument which has been solemnly executed; and in such a suit it is essential to allege and prove the circumstances of fraud, accident, or mismistake, which resulted in the omission of the omitted, or the addition of the erroneous terms. The terms of a written instrument cannot be varied any more in equity than at law, unless the variation sought to be established was a substantive part of the concurrent agreement of all the parties to the instrument, at the very moment when it was executed, and was omitted from the writing through fraud, accident, or mistake; both of which facts must be established by clear, conclusive, irrefragable evidence. There is a *prima facie* presumption of law, that the written instrument shows the ultimate intention and agreement of all the parties thereto, and that all previous proposals and arrangements, so far as they are inconsistent with that instrument, were deliberately abandoned by all the parties when they signed it. The evidence to correct it must be strong enough to rebut this presumption, and to show negatively that some previous arrangements or proposals were *not* abandoned, and to show this as to every party to the instrument. *Howell* v. *Hawks*, 2 Dev. Eq. 258; *Wilkinson* v. *Wilkinson*, 2 Dev. Eq. 376; *Ward* v. *Ledbetter*, 1 D. & B. Eq. 496; *Parker* v. *Vick*, 2 D. & B. Eq. 195; *Harrison* v. *Howard*, 1 Ired. Eq. 407; *Whitfield* v. *Oates*, 6 Jones Eq. 136; *Fowler* v. *Fowler*, 4 DeG. &

J. 265; *Nevins* v. *Dunlap*, 33 N. Y. R. 676; *Stockbridge Co.* v. *Hudson Co.*, 102 Mass. 45; *Sawyer* v. *Hovey*, 3 Allen 331).

But what circumstances of fraud, accident or mistake, are alleged by the Defendant (T. P. D.), to account for the failure of the deed to express the real agreement of all the parties thereto? What circumstances of fraud, accident or mistake, *can* be alleged as the ground for reforming an instrument, executed with the care, delibaration, and accuracy of detail and legal diction, apparent in this deed—executed too, under the circumstances detailed and admitted in the pleadings? The deed itself, and the facts and circustances which surrounded its execution, are such, as absolutely negative and exclude even the supposition of any mistake.

There is another fatal objection to the equity for correction in this case: T. P. Devereux is a bare volunteer and beneficiary—his mother *gave* him the Pollok estates, subject to the charges imposed upon them by the deed of 1839—which estates exceeded in value the charges upon them ten fold; he cannot allege nor prove either a valuable, or a meritorious consideration, moving from himself, (*Woodall* v. *Prevatt*, 1 Bus. Eq. 199; *Hunt* v. *Frazier*, 6 Jones Eq,, 90.)

But if Mrs. Devereux had, in 1845, executed to Thos. P. Devereux a deed, which in the most explicit terms released and discharged him, from the unpaid arrears of the annuity of $3,000, and, for the future, from all of said annuity which exceeded the amount of the interest on so much of the $50,000 fund as from time to time remained unappointed by her—even such a deed could not avail him in this cause. Keeping in view the facts and circumstances which this case discloses to have surrounded the parties in 1845, and the relations both of blood and trust which subsisted between them—the age, helplessness, and isolated position of the mother—the natural and necessary influence of the only son, an experienced lawyer in the prime of life—her trustee charged and entrusted by the whole family with the management of the family estate—in equity such a deed would

be *presumptively fraudulent.* A Court of Equity looks with extreme jealousy on transactions between parties who stand in such close and fiduciary relations, by which an undue influence may be obtained by one over the other, and unless he, who receives the benefit, can *show* that it was conferred understandingly, and with a full knowledge of the circumstances, and apart from the bias of that connection, will deem them fraudulent and will set them aside. It is true there is no positive rule of equity that a trustee cannot deal with his *cestui que trust,* nor a son in the vigor of his manhood with his aged, and infirm, and widowed mother; but in order to do so, he must fully divest himself of all advantage which his character as a trustee and son might confer, and if the transaction be afterwards impugned, he must *prove* that he did so, and that it was in all respects fair and honest, (*Adams' Eq.*, 184; *McRae* v. *Battle,* 69 N. C. R. 98; *Lee* v. *Pearce,* 68 N. C. R. 76: *Williams* v. *Powell,* 1 Ired. Eq. 460; *Michael* v. *Michael,* 4 Ired. Eq. 349; *Baxter* v. *Costin,* Bus. Eq. 262; *Deaton* v. *Monroe,* 4 Jones Eq. 39; *Futrill* v. *Futrill,* 5 Jones Eq. 61; *Oldham* v. *Oldham,* 5 Jones Eq. 89; *Franklin* v. *Ridenhour,* 5 Jones Eq. 420; *Hadley* v. *Rountree,* 6 Jones Eq. 107.)

What *proof* has the Defendant (T. P. D.) tendered in this case that he divested himself of the advantage of his position, and that the execution of the alleged *Deed of Explanation* was in all respects fair and honest? There was a Replication to the Answer; T. P. Devereux put in no evidence; an answer, after replication, is not evidence for the Defendant, except as it is made so by discoveries called for in the bill, and which are responsive to direct charges or special interrogatories. (*Gillis* v. *Martin,* 2 Dev. Eq., 470; *Lyerly* v. *Wheeler,* 3 Ired. Eq., 590; *Dudley* v. *Winfield,* Bus. Eq., 91; *Woodall* v. *Prevatt,* Bus. Eq., 199; *Thomas* v. *Kyles,* 1 Jones' Eq., 302.) In the estimate of the motives that might have led to such a transaction, it cannot be without weight, that maternal duty and affection, however commen-

dable in themselves, and however their *spontaneous* action may be recognized and binding, strengthen the probability of their being *converted* into means of wrong and oppression; and this very probability it is which challenges the duty of watchfulness and jealousy in the courts, in scanning the transactions of those whose peculiar situation exposes them to danger from such means; in the present instance, having already bestowed the bulk of her estate upon her son, it is thought that the injunctions of maternal duty and affection can hardly have demanded the surrender of any part of the moderate income reserved to the mother; and proper filial tenderness and solicitude for the welfare of the mother, as well as the true principles of rectitude and fairness, seem to forbid the acceptance of any such sacrifice. So far from adducing any evidence in support of Exhibit X, the Answer itself suggests a *mistake* in the deed of 1839 as the consideration on which it was based; a mistake which, we submit, that the facts and circumstances attending and surrounding the execution of the deed, and disclosed in the pleadings, most emphatically negatives; and it seems impossible to resist the evidence furnished by Exhibit X itself, that it was a fabrication, designed to conceal the very facts and circumstances which it palpably betrays—in *fact* a bounty conferred upon the son by the mother, upon *his* suggestion that there had been a mistake in the original deed—in form, a declaration by the mother that there had been such a mistake, and her spontaneous desire to correct it.

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4. Exhibit X, being put out of the way, we submit that it is quite clear—Thomas P. Devereux as Extr., ought to be charged with all *arrears* of the *whole* of the $3.000 annuity, created and charged upon his land by the deed of July 3rd, 1839, which remained unexpended or unappointed by Mrs. Devereux, at her death, as part of her personal assets which came into his hands as her Extr.

We shall not argue this point at any length. The arrears of the $3,000 annuity were undoubtedly *personal* and not real estate. Money secured by mortgage on real estate is personalty, and devolves upon the personal representative, even though the mortgage be in fee. Whenever the holder of property is subject to an equity in respect of it, a court of Equity will, as between the parties to the equity, treat the subject matter as if the equity had been worked out, and as impressed with the character which it would then have borne; the property in its unconverted state, is subject to the same laws of devolution and transfer, as if the actual conversion had been made. (*Adams Eq.*, 135) So that, whether we regard the $3,000 annuity, *charged upon the land*, as a sum of money secured by the land, or as a conversion *pro tanto* of the real estate conveyed to T. P. Devereux, it is personal assets, and devolves upon the personal representative as part of Mrs. Devereux' general personal estate. It has even been *held*, that a pecuniary legacy charged upon her land, is a conversion *pro tanto* of the land, and personal assets of the legatee, dying after the testator, and before the legacy had been paid. (*Leigh and Dalzell on Eq., Conver.*, pp. 136 to 147.) And by and in a court of Equity—money by will appointed under a general power to appoint for any purpose, whether the power be one reserved by the testator to himself on a settlement made by him, or be a power given to the testator by another person, whether it be a power to charge land or personalty, either of himself or of another person, is held to be personal assets. (*Ram on Assets*, 149, *and the cases there cited.*)

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5. In taking the account of Thomas P. Devereux as Executor, the paper writing bearing date October 20th, 1846, and signed by Frances Devereux, (*Exhibit E E with Report; Record*, p. 155), ought not to have been regarded by the

Master as a *stated account*, CONCLUSIVE *of all matters of account between the said Thos. P. and the said Frances, previous to and including the 22nd June*, 1846. The language of the Exhibit is as follows:

"Seymour W. Whiting has gone over and examined the accounts be-
" tween Frances Devereux and Thomas P. Devereux, and after taking
" from the accounts of the said Thomas, heretofore rendered the said
" Frances, the sum of five hundred and twenty-five dollars ($525), with
" interest thereon, heretofore charged to the said Frances by the said
" Thomas, as one-half of the annuity to Miss Elizabeth Reeve, the balance
" ascertained by him to be due the said Frances by the said Thomas is
" the sum of twenty-nine thousand six hundred and sixty-four dollars
" sixty cents ($29,664.60), which sum is due on and bears interest from
" 22nd of June, 1846, and the said sum is hereby agreed to be correct,
" subject, nevertheless, to the following objections by the said Frances.
" viz:

"1st. The sum charged in the said account is an annuity to Miss Ogden,
" amounting to the sum of three hundred dollars per annum, and it is
" agreed that the justice and propriety of the charge be referred to the
" arbitrament of the Right Reverend Leonidas Polk. If he decides the
" same to be correct, then, in respect to the said objection, the said ac-
" count is to stand. If he decides that the said charges are not correct,
" then the said account is to be altered in that respect, and the said bal-
" ance increased by the principal and interest of the said sums so charged.

"2nd. By the sum of five hundred and fifty-nine dollars ninety-two
" cents ($559.92) to Colin M. Clarke for the balance of the debt of George
" P. Devereux, which does not appear separately in the said account
" drawn off by the said Whiting, but which the said Thomas admits to
" be a part of the first item ($4,099.45) in the same, and which was
" charged to the said Frances some time in the month of October or
" November, 1839.

" 3rd. The charge to the said Frances of three hundred and thirty-three
" dollars ($333.00) on the first day of November, A. D. 1840, for the
" grave-yard.

" 4th. The charge of nine hundred and ninety-two dollars ($992) for
" the cost of a monument, charged to the said Frances on the 16th of
" October, 1843.

"These three last items, both as to their propriety and the proper
" amounts, if proper, the said Frances and Thomas have agreed to refer
" to the arbitrament of Doctor Strumans J. Baker and Seymour W.
" Whiting, and the said account is either to stand or be corrected accord-
" ing to their award. Subject to these exceptions, the said account is
" signed, and agreed to be correct, October 30th, 1846.

FRANCES DEVEREUX."

We know of no principle of law or equity, nor of any rule of evidence in either tribunal, which made this exhibit *conclusive* of the state of accounts between Thos. P. Devereux and Frances Devereux on 21st of June, 1846, when it was offered for the defendants before the master taking the account in this cause. The *ratio decidendi* of the court below is left to conjecture. We had supposed, that the principle was well established in courts of equity, that a defence which, assuming the truth of all the allegations in the bill, rests upon some affirmative matter of avoidance, to bar both the discovery and the relief demanded, must be in some manner averred by the defendant, either in a plea or in his answer, before he can avail himself of it; and that an "account stated" between the parties, as a bar to the discovery and retief, prayed in a bill for an account, was no exception to the general rule. A failure to enforce this rule in equity practice must result most disastrously to plaintiffs. No better case for illustration can be found than the one before the court. Mrs. Devereux died in 1849; her will was admitted to probate in 1852; as soon as the younger of George P. Devereux' children arrived at age in 1857 they filed their bill against Thos. P. Devereux as trustee and executor of their deceased grandmother for a discovery and an account of the $50,000 fund, of the $3,000 annuity, and of her general personal assets. He demurs to their bill, insisting that by their own showing, Mrs. Devereux had not appointed the $50,000 by her will; that it had lapsed for his benefit; that he had never qualified as her executor, and consequently that they were not entitled to any discovery nor to any account from him, either with reference to the $50,000 charge, the $3,000 annuity, or the general personal assets. The demurrer is overruled and he required to answer, and is thereby put upon his guard, that a court of equity may take a very different view of the relative and reciprocal rights and duties of the plaintiff, and of the defendant from the latter. He answers, insisting upon the same defences, and varying his

case only by the attempt to set up, in addition to the facts disclosed by the bill, the alleged *deed of explanation*, and still refuses to make any discovery, and denies the plaintiffs' right to *any* account, and especially to any account of the $50,000 charge and the $3,000 annuity, which latter he now avers is but the interest on the former, and has lapsed together with its principal for his benefit, by reason of Mrs. Devereux' failure to appoint the same in her will. His answer is *excepted* to by the plaintiffs, because he will not make the discoveries demanded by their bill. He yields so far as the negro slaves are concerned, but files his amended answer, in which he explicitly and firmly refuses to make any discovery respecting the $50,000 charge, and, what he calls, the interest thereon, still denying that the plaintiffs have any right to an account of the same. By indulgence of the plaintiffs he is again allowed to amend his answer; but he still adheres to his original position, refusing throughout, and under every pressure, to make a discovery *on oath* of his dealings with these two funds, which in this court, and under the circumstance of this case, would have been forceful and almost conclusive evidence for him in this controversy, and uses the favor extended to him by the plaintiffs for the single purpose of attempting to set up against these young ladies—the only children of his only and deceased brother—the defence of the *Statute of Limitations*.

Replicaton is filed to his answers. He offers no evidence to support their allegations. The cause is heard, and the late Chief Justice held, that the plaintiffs were entitled to an account of the $50,000 charge, of the $3,000 annuity, and of the general personal assets, and ordered a reference to the master, and accounts to be taken by him of all these funds.

During all this time the defendant (T. P. D.) has never suggested, that as to so much of the plaintiffs' bill as seeks an account and discovery, concerning the dealings therein alleged to have taken place between Thos. P. Devereux and Frances Devereux, before the 21st day of June, 1846, there

had been an account made up and stated in writing between them, which account was just and true, and was a bar both to the discovery and to the account, demanded by the plaintiffs, of all matters previous to that date. No such matter has been set up by plea—no such matter is set up in the original or in either of the amended answers—no evidence of any such matter was offered before the *hearing*; and even *after* the order, which directed the master to take an account of the whole of the $50,000 charge, and of the whole of the arrears of the $3,000 annuity, from the time they were created by the deed of 1839 until the death of Mrs. Devereux in 1849, no application is made to the court for leave to set up any such plea or to add any such amendment to the answers.

Thos. P. Devereux becomes bankrupt—he dies—it becomes impossible to examine him on oath upon interrogatories before the master—he has carried his cause before another tribunal and cannot make affidavit before the master in our chancery, that the account which was the basis of *Exhibit E E*, relied upon by the Defendants, was "*full*," and "*just*," and "*true*;" he alone of all mankind could give the true history of these funds and their disbursements; every possible opportunity has been offered him to do so; and then, when the account comes on to be taken before the master, the Assignees in Bankruptcy of this dead man—twenty-four years after the death of Mrs. Devereux—fourteen years after this suit was instituted—without any itemized statement of charges and discharges in support of it—with only some evidence that an effort towards an *estimate* of the balance that might be due from T. P. Devereux had been made in 1846, between him and his mother—without evidence that an account was actually stated, or of what were the matters embraced within the *attempt* to settle—produce for the first time, and offer in evidence, this paper writing, and *demand* that the master *shall not* take an account of the $50,000 charge, and of the $3,000 annuity, between the 3rd day of

July, 1839, and the 21st day of June, 1846; notwithstanding the order of the court directs him to do so; because, as is claimed, that paper is *conclusive* of *all* matters of account between Thos. P. Devereux and Frances Devereux, up to and including the 21st of June, 1846: That notwithstanding the relations of blood, and trust, which existed between the parties to the instrument, and the age and dependence of the mother, and the influence of the son, and the suspected imbecility of the mother (*Answer of Devereux; Record, p.* 59), and the fact that the body of the instrument is admitted to be in the handwriting of the son, and that there is no attesting witness thereto (*Mr. Page's Report; Record p.* 123), and that the son had declined under every pressure, and as long as he lived, to make any discovery on oath, and even to verify this very instrument—the Plaintiffs cannot impugn this instrument for fraud—that they cannot offer evidence to surcharge and falsify the account, or the *alleged* account upon which it is based—that they cannot require the Defendants to furnish them with a counterpart, or copy, of this account and point out upon its very face errors of omission or commission, the results of fraud, or accident, or mistake, or even surprise. In fine, that by failing to set up this defence during his lifetime, *by Plea*, or in his *Answer*, and allowing the Court to go on and decree against him as if he had no such defence, and evading the guard which Courts of Equity have imposed upon such a defence, by requiring the oath of the Defendant that the account relied on is full, and just, and true, before it can be made available either by way of plea, or by way of answer—the Defendant (T. P. D.) through his Assignees in Bankruptcy, is to enjoy peculiar privileges in a Court of Equity, which if he had put up this defence in apt time, and in the regular manner, he could not have enjoyed. And the Circuit Court of the U. S., sitting in Equity, sustained this demand of the Defendants, and held that the paper writing relied on ought to have been regarded as conclusive by the master—ought to have

overridden their own decree—and ought to have restrained the master from taking and auditing the account between Thos. P. Devereux and Frances Devereux, from the 3d of July, 1839, to the 21st of June, 1846, which they had expressly directed him to take.

If Mrs. Devereux had *released* T. P. Devereux from all liability under the deed of 1839, and he had failed to set up such *release* by Plea, or in his Answer, and the court had decreed an account—he could not have produced the release for the first time before the master, and insisted upon it as a bar, which prohibited the master from obeying the order of the court and proceeding with the account; if they had consented to the arbitration of all matters of account between them, and the arbitrator had made his *award*, and T. P. Devereux had failed to set up such *award* by Plea, or in his Answer, and the court had decreed an account, he could not have produced the award for the first time before the master and insisted upon it as a bar, which prohibited the master from obeying the order of the court and proceeding with the account; and so, in our case, he, and especially after his death his Assignees in Bankruptcy, could not produce this paper, which they claimed to be an *Account Stated*, for the first time before the master, and have it regarded by him as *conclusive* evidence of all matters of account previous to, and including the 21st of June, 1846, between T. P. Devereux and Frances Devereux, so as to bar the investigation of the account previous to that date, as directed by the Court of Equity.

If T. P. Devereux relied upon the account stated, he ought to have set it up by plea, or in his answer, and then he must have verified it by his oath, and sworn that it was full, and just, and true. Pleas in bar of matter *in pais* as well as Answers in Equity, must be put in on the oath of the Defendant, (*Adams' Equity*, 341; *Mitford on Pleading*, 301; *Willis' Pleadings*, 551–552; *Harrison* v. *Bradley*, 5 Ired. Eq., 142; *Rules of Eq. Prac. in U. S Courts*, No. 31); and the Plaintiffs

could then have *amended* their Bill, and alleged that they had no counterpart of the detailed statement of the alleged account, and the Defendant would thereupon have been compelled to append the same as a schedule to his Plea or Answer, that if there be any errors upon the face of it, the Plaintiffs might have had an opportunity of pointing them out, (*Willis' Pleading*, 55; *Mitford's Pleadings*, 259; 2 *Dan. Ch. Prac.*, 763; *Story's Eq. Plea.*, s. 802); or the Plaintiffs might have amended their Bill, by alleging that the agreement relied on—regard being had to the circumstances of the parties, and the relations subsisting between them, and the time when the writing was produced, and the other facts that could be adduced in evidence—was fraudulent and void; and then both the Plaintiffs and Defendants could have gone into general evidence before the decree for an account was made, to prove whether it was entered into fairly and deliberately, and was a valid and binding transaction and a bar to the account—or was in fact not based upon an actual accounting at all—that no account was rendered for examination or attempted to be taken—that no vouchers were produced—that Mrs. Devereux had no professional aid in taking the account with her son and trustee, who was a learned and able solicitor (*Deposition of John Devereux, No.* 1; *Record*, p. 144)—and in fine, that it was not such a settlement of accounts, made under such circumstances as a Court of Equity would recognize by holding it conclusive between the parties; and the Court would have decided upon all the evidence, whether the alleged stated account was a *bar* to the discovery and account sought—or the *discovery must be made and the account taken*—or might have left the matter open for further investigation before the master, if not entirely satisfied; in which last event the decree ordering the account might have been special, embracing a direction that "*if in taking the account the master shall find stated accounts he shall allow them.*" (*Bennett's Prac.* 87; *Adams, Eq.*, 226; *Green* v. *Burt*, 2, *Iredell Eq.*, 245); but unless the decree for an account

expressly direct the master not to disturb stated accounts if he shall find them they are but evidence before him like any other admissions of the parties; and this form of decree is adopted *only where a stated account has been set up in the answer and the allegation in the answer is not proved*, and not where the stated account is not pleaded at all, or having been pleaded it is attacked by the plaintiff for fraud: or the plaintiff's not relying upon any such mistake, or omission, or accident, or fraud, or undue advantage, as vitiated the *whole* account and affected and stained all the items of the transaction, might have so amended their bill as to impugn one or more items, which they specially set forth as being erroneous or unjustifiable; whereupon the Court would have allowed the account to stand, with liberty to the plaintiffs to surcharge and falsify it; the effect of which would have been to leave the account in full force and vigor as a stated account, except so far as it could be impugned before the master for errors and mistakes proven therein, (*Story's Eq. Juris.*, secs. 523–529; 2 *Dan. Ch. Prac.*, 761–766; *Story's Eq. Plea.*, secs. 778–802; *Adams Eq.*, 226–227; *Mitford's Plea.*, 259; *Compton* v. *Greer*, 2 *Dev. Eq.*, 93; *Graham* v. *Davidson*, 2 D. and B. Eq., 155; *Green* v. *Burt*, 2 Ired. Eq., 545; *Harrison* v. *Bradley*, 5 Ired. Eq., 136; Lynch *v.* Bitting, 6 Jos. Eq). If therefore, T. P. Devereux had set up this alleged stated account by plea, or answer in apt time and according to the course of the Court the plaintiffs might have applied to it any or all of these tests of its validity and fairness.

But because he failed to set it up by plea or answer, and after his assignees in bankruptcy adduce it before the master for the first time, when he is taking the account under a general order directing a general account throughout the whole period covered by T. P. Devereux' trusteeship, the Court below decides that the master must regard it as *conclusive*, and the plaintiffs are deprived of the benefit of each, and of all these tests; they cannot have his affidavit that the account is full and just and true. They cannot examine him on interroga-

tion; they cannot be furnished with a copy of the account so that they may point out evident errors and omissions apparent on its face; they cannot set it aside for fraud and error permeating the whole; they cannot impugn particular items it as being erroneous or unjustifiable; it is conclusive; it is a bar; they cannot get behind it; they cannot have the master take the account which the Court by its decree has directed that he shall take. We submit that this is not, and cannot be the law.

The evidence clearly discloses that Mrs. Devereux, then about seventy-seven years of age, had no professional aid in coming to this settlement; the whole case demonstrates that Whiting was but an automaton in the hands of T. P. Devereux; we do not mean that Whiting was instigated to commit any fraud *in fact*, but only that he was under the influence of Devereux, moved by his views, controlled by his judgment, acting as his agent. Exhibit E. E. does not profess to state that any account was made out by Whiting, but only that he had "*gone over and examined*" accounts theretofore rendered by Thos. P. Devereux; no itemized account made out by Whiting or any one else was exhibited by the Defendants before the Master, as constituting the consideration upon which the agreement E. E. rested; and it is quite apparent from the evidence offered by the Defendants that Whiting never stated any account, (*John Devereux Dep. no.* 1; *Record, pp.* 143–144–146–147–148), but, simply assuming the soundness of T. P. Devereux' statements of law and fact, performed the clerical duty of examining the accounts which Devereux had prepared; it is certainly giving quite enough weight to this paper-writing to hold, that it is evidence of admissions by Mrs. Devereux, to be weighed by the Master along with the other evidence, and with all the other circumstances of the case proved before him, in arriving at his conclusions of fact. And so the Master held: his decision upon this point, (*Record, pp.* 122 and 123) was as follows:

"The counsel for defendants then offered, as sufficient evidence of an "account stated and settled between Mrs. Frances Devereux and Thomas "P. Devereux, up to the 21st June, 1846, a paper writing signed by Mrs. "Frances Devereux, the body of which paper writing is admitted to be "in the handwriting of Thomas P. Devereux, purporting to be a statement "made by Mrs. Frances Devereux that S. W. Whiting had gone over the "accounts between herself and son, Thomas P. Devereux, and found them "correct, &c., as per the said paper writing, which is herewith filed among "the exhibits in the cause, and marked "Exhibit E E."

"On this point the commissioner ruled that the relationship of trustee "and *cestui qui trust*, being in existence between said Frances Devereux "and Thomas P. Devereux, and S. W. Whiting being merely the agent of "Thomas P. Devereux, and there being no evidence offered before the "commissioner of Mrs. Devereux's knowing fully the contents and mean- "ing of said paper offered for her signature by her trustee, or that she was "properly advised of the legal effects of the same, or that any evidence "was offered to satisfy her of the correctness and fairness of said matters "of account therein stated, that therefore he could not receive the said "paper writing as full and sufficient evidence of an account stated and "settled between parties up to the 21st June, 1846."

And we submit that his decision was correct. Assuming that he was at liberty, under a decree specially directing him to take an account of the $50,000 charge, and the $3,000 annuity in general terms, not to disturb a fair, full, just and true stated account offered in evidence before him—without any special directions in the decree requiring him to do so, (an assumption which the practice in the Master's office will not bear out)—and taking his position to be that of a chancellor, hearing a Bill to impeach a stated account, as having been assented to unadvisedly through fraud practiced, and undue influence exercised—it would be contrary to the tenor of all the authorities, if any agreement entered into under such circumstances as are disclosed by the pleadings, and exhibits, and evidence in this cause—which the party mainly interested in establishing had refused to verify by his oath; and will not swear is correct, but leaves the other party to make full proof if she can that it is not correct—should protect the Assignees in Bankruptcy of an agent, trustee and son, from rendering an account to the

representatives of the principal, *cestui que trust*, and mother. To hold this loose transaction to be an account settled between Thos. P. Devereux and his mother, under the circumstances disclosed in this cause, would be to violate the plainest principles of equity. No trustee could be discharged by such a paper—and there is no trust which can be reposed in one person over the property of another, in regard to the management whereof a full and detailed account is more imperiously demanded than in this, under all its circumstances, and with all its surroundings, (*Jenkins* v. *Gould*, 3 Rus. 385; 3 Con. Eng. Ch. Rep. 446; *Graham* v. *Little*, 3 Jones Eq. 152; *Lee* v. *Pearce*, 68 N. C. R. 76: *McRae* v. *Battle*, 69 N. C. R. 98).

If it be suggested that it may be oppressive upon T. P. Devereux to drive his representatives *now* to a general account, when many of the vouchers and documents may be lost, which he would have taken care to preserve had he not been induced to rely on this compromise; then, we reply, that, considering the nature of the settlement, he was not justified in placing reliance upon it. As a professional man he must have known *that*, and that it was his duty to keep, and that he could only safely guard himself by keeping, a regular account of his receipts and payments, and of the documents and vouchers to sustain them. The more extensive the transactions the more imperative was the duty, and if he has neglected to perform it, the inconvenience and the loss resulting from the omission must fall upon himself or upon his representatives. But there is no evidence that any real inconvenience is likely to be sustained on this account. Thos. P. Devereux has never made any affidavit of the loss or destruction of his vouchers, or that he surrendered them up to Mrs. Devereux when this settlement was made. It is true, John Devereux made oath that he could not find them after searching for them, and that when he last saw them they were in Whiting's hands in 1846. But this matter is not to be looked at as it appears fourteen years after the suit

was brought; after a war has intervened; after the principal defendant has become bankrupt and died; but as it was when T. P. Devereux was alive to speak for himself, and when the suit was brought against him in 1859, shortly after the *feme* plaintiffs were of age; and it is to be borne in mind, that after her death he controlled all Mrs. Devereux' papers as well as his own; and, if the vouchers and documents connected with this account cannot be produced by the defendants, it seems more than probable that it is because T. P. Devereux purposely destroyed or negligently lost them after this suit was instituted.

The master went behind the agreement (Exhibit E. E.), and did not adopt the balance there ascertained as the true balance on the 21st of June, 1846; and having looked behind it, he found further cause for holding that agreement fraudulent and invalid. We have already stated that no itemized account was exhibited by the defendants along with Exhibit E E, but they did offer in evidence a ledger which purports to contain Thos. P. Devereux' account with Frances Devereux, (*Record, pp.* 167–177), kept by John Devereux, the son of Thomas, in the manner stated in his deposition No. 1, (*Record, pp.* 141–143), which account the evidence shows almost conclusively is the one which Whiting "*went over and examined*" The very first item in that account (*Record, p.* 167) is palpably and plainly erroneous by thousands of dollars. He charges himself with $50,000.with interest thereon for one year, ending Agril 15th, 1841—$3,000, in all $53,000; whereas it is apparent (for the alleged "*deed of explanation*" had not *then* been executed, whatever its effect may be) that he was then indebted to his mother for the $50,000, the annuity of $3,000 due 1st of March, 1840, and the annuity of $3,000 due 1st of March, 1841, and interest on the first installment of the annuity $202.50, and interest on the second installment thereof, $22.50, making in all $56,225, the real amount then due by him—a mistake to Mrs. Devereux' disadvantage of $3,225, which infects the account from the beginning to its end.

Take the second item of the account where he debits Mrs. Devereux with "cash advanced at sundry times from July, 1839, to April, 1840" $4,099.45; interest on same $368.19; in all $4,467.64. The defendants were not prepared to show the itemized disbursements which constituted this charge; but the master only found (*Record, pp.* 127*; Account B*) $1,385.65 actually expended by Thos. P. Devereux for Mrs. Devereux during this time; and we know, from the other parts of the evidence, what some of these items were: One of them was $559.92, claimed to have been paid by Thos. P. Devereux to Colin M. Clarke for the balance of a debt due by George P. Devereux, deceased, which he charged against his mother (*Record, p.* 155); which item was subsequently objected to by Mrs. Devereux, referred to arbitration, and the arbitrators awarded that she was *not* to be charged with the same. Another one of them was annuity of $300—probably two installments of it, amounting to $600, which Mrs. Devereux objected to (*Record, p.* 153), which was referred to the arbitrament of Bishop Polk, and which he afterwards decided ought *not* to be charged against Mrs. Devereux, (*John Devereux' Dep., No.* 2*; Record, p.* 149.)

We might refer to many other items of said account, as plainly and palpably erroneous to the prejudice of Mrs. Devereux--e. g. that during the whole ten years of Mrs. Devereux' life, T. P. Devereux insisted upon paying to Miss Ogden annually $300, notwithstanding Mrs. Devereux' known objection thereto, and charging her therewith, but we content ourselves with citing one more gross error: we find an entry to the debit of Mrs. Devereux, on the 15th of April, 1842, (*Record p.* 168,) in these words: "*to this sum allowed T. P.* "*D. in consequence of loss of one-half Trent land,* $4,000. *To in-*"*terest thereon, compounded from April 15th,* 1839, *say four years.* "(*The interest is compounded because it has heretofore been allowed* "*and paid to Mrs. D.*) $1,048.82"—in all, $5,048.82. Now it is difficult to understand what this means from the entry, but the evidence of John Devereux, a witness for the Defendant's, (*Dep. No.* 1, *Record p.* 145,) explains it as follows:

The deed of 1839, settleing the Pollok real estate upon T. P. Devereux, does not specify and distinguish any of the lands by metes and bounds; it purports to convey *all* that descended upon Francis Devereux as one of the heirs of Geo. Pollok, either in severalty, or as tenant in common, but nothing more. Only an undivided moiety of the *Trent land* descended to her, and only that was conveyed by said deed of 1839; but the whole of it lying in Craven and Jones counties, N. C., was insignificant in value and amount, when compared with the immense estate, real and personal, given to and settled upon Thomas P. Devereux by the two deeds of 1839. We shall assume, though there is no distinct evidence of it, that both Frances and Thomas P. Devereux thought, that she was entitled to the *whole* of the *Trent land* when the deed was executed. There was no warranty of title in the deed, and Thomas P. Devereux was not a purchaser for value, but a volunteer, receiving a very large bounty from his mother, even if he had lost *all* the *Trent land.* He afterwards ascertained that he was entitled to only an undivided moiety of it under the deed; and thereupon he makes this charge of $4,000, the value of the other moiety, against his mother in his account with her, for *his loss of one-half of the Trent land*!! Not content with this he charges interest on that sum!! Not content with this he charges interest from the 15th April, 1839, an epoch ante-dating the deed by about three months; and compounds the interest for four years!! And he bases his claim for compound interest upon the absurd position, *"that it has heretofore been allowed and paid to Mrs. D."*—which is contradicted by the earlier portion of the very account in which the claim is made. John Devereux in his deposition No. 1, (*Record p.* 145,) *says*—*"there was no written voucher for this charge"*—*but says his grandfather*—*"told Frances Devereux, she ought to allow "T. P. D. a credit for* $4,000 *on her claim against him by reason "of his loss. That she frequently in his (the witness's) presence, "assented to said claim, and its fairness, and so far as his (witness') "recollection extends, Mrs. Devereux during her lifetime never ob-*

"*jected to the charge itself, but to the interest as charged thereon.*"

There is no disguising the fact, that this is a flimsy attempt to bolster up an unjust charge for upwards of $5,000, made by a trustee against his *cestui que trust*, by the allegation of a *gift* of that much of the trust fund—evidenced by a bare oral *assent thereto in casual conversations*, as if it were a pair of gloves, or a pet cat, that she was giving away: Is it not evident from the Defendants' own testimony, that some pretended claim of duty or honor, was urged upon this aged lady, by those in whom she had most confidence, and by whom she was surrounded, to induce her to give even this limited *assent* to the appropriation of her money by her trustee? *Graham* v. *Little*, (3 Jones Eq., 152,) is a closely analogous case. We submit, that such a gift as this, by a *cestui que trust*, to her only son, who is her trustee, would be annulled and set aside by a Court of Equity—*a fortiori*, the trustee, in rendering his account, cannot specifically enforce it. Farther comment is unnecessary.

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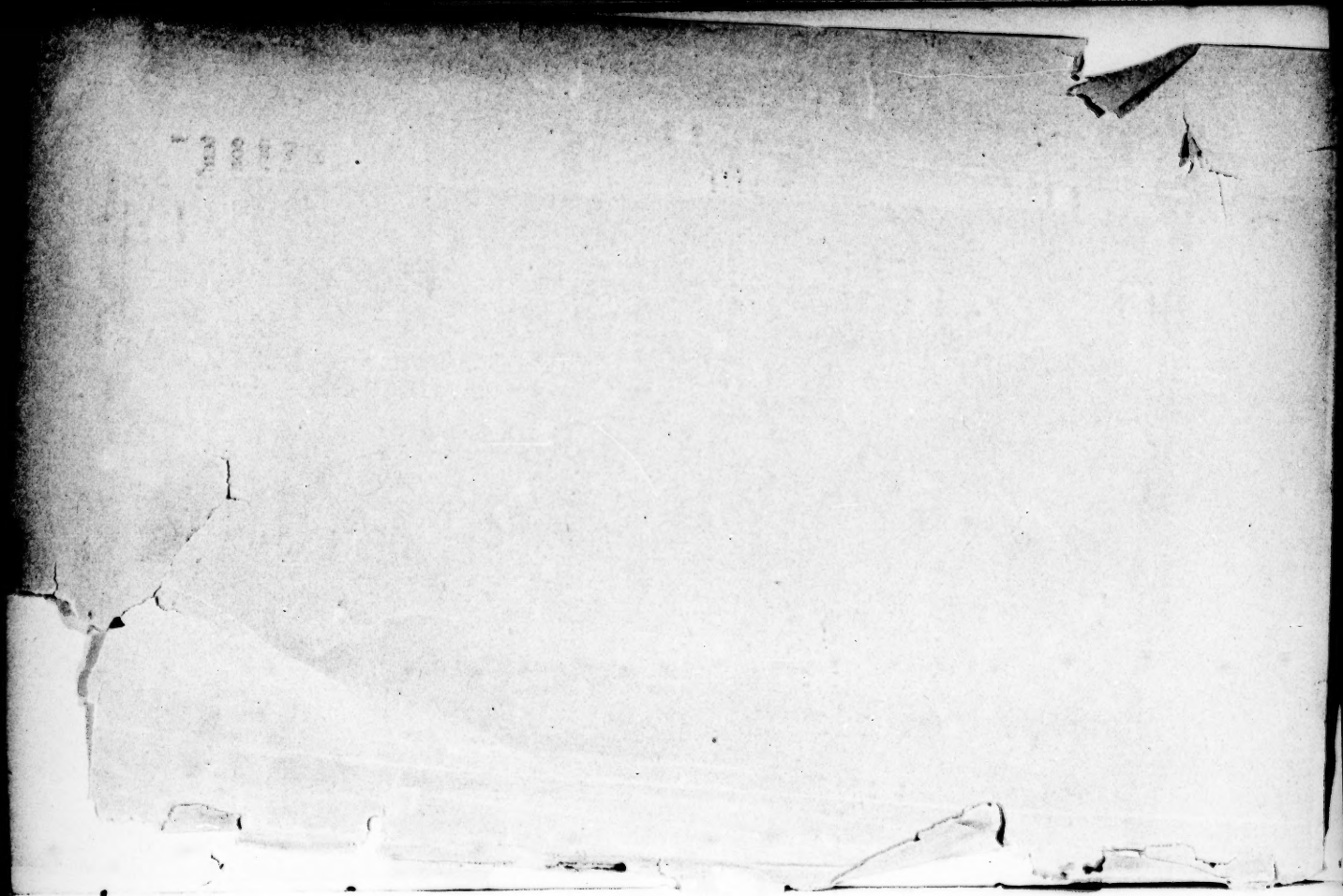
6. In taking the account of T. P. Devereux, as Executor, the paper writing of 1847, signed by W. D. Cooke, (*Exhibit B B, with Mr. Page's Report: Record* 156-157,) which was not pleaded, nor set up in his Answer, ought not to have been regarded by the master as a *Stated Account*, CONCLUSIVE *of all matters of account between the said Thos. P. and the said Frances previous to and including the* 21*st day of June*, 1847.

The points of law and evidence involved in this proposition, are substantially the same which we have urged in arguing the next preceding one—we shall not repeat them. This account is based upon the *balance* ascertained and declared by *Exhibit E. E.*, and necessarily propagates, and continues and extends all the errors involved therein, and represented by that *balance*: moreover the Deposition of W. D. Cooke, (*Record*, 151–153), a witness for the Defendants, proves, that there were no vouchers produced and examined when it was made up, that it is not founded on an *actual* accounting, and was not intended by the parties as a permanent *memorial* of a Stated Account.

S. F. Phillips
for appellants



Supreme Court of the United States.

No. 56.

GRINFILL BLAKE ET AL., Appellants,

vs.

W. J. HAWKINS ET AL., Assignees, &c.

Brief of A. S. MERRIMON, for Appellee.

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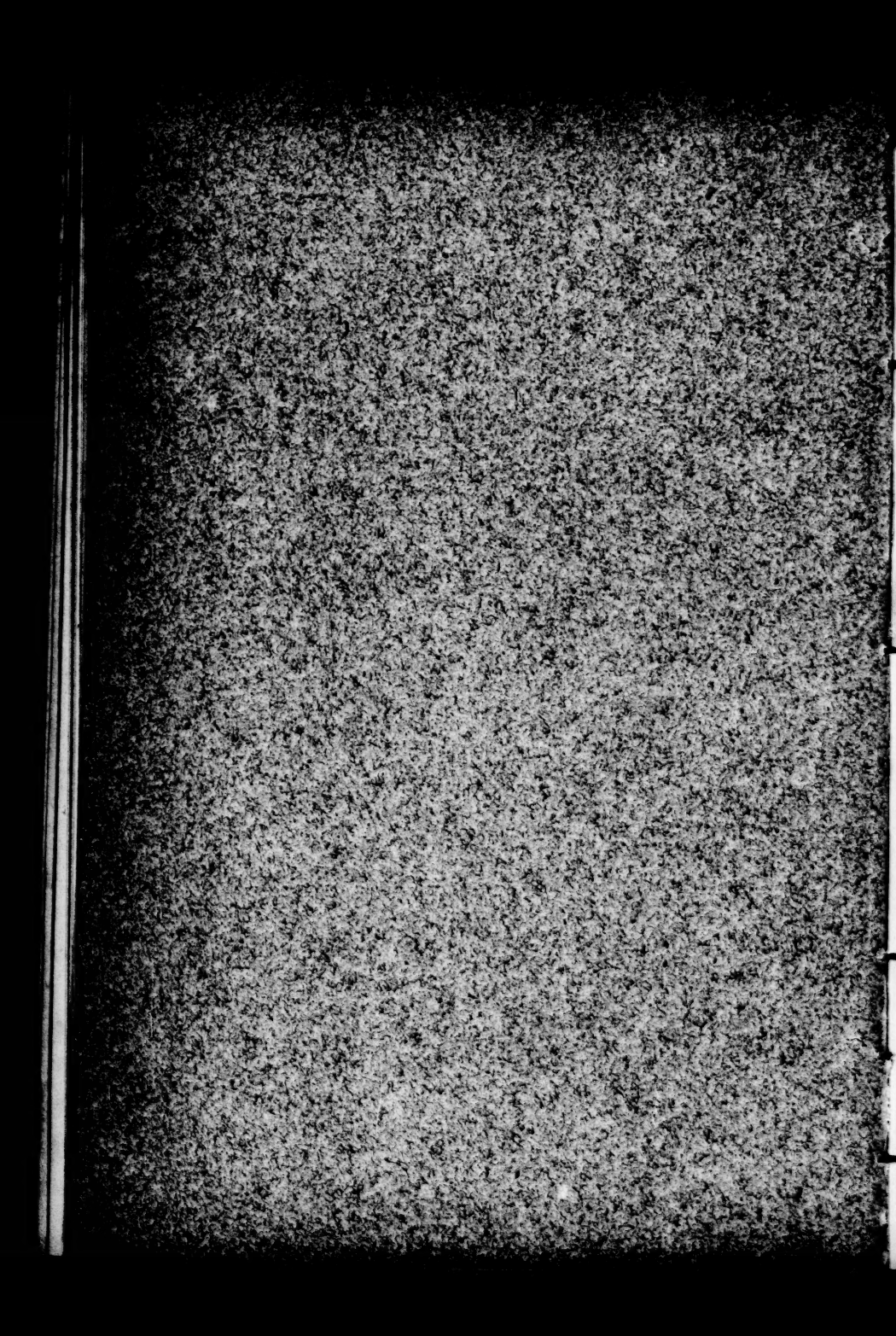

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Brief of A. S. MERRIMON, for Appellee.

On the 3d day of July, 1839, John Devereux and his wife Frances conveyed to Thomas P. Devereux in fee certain real estate, subject to charges as follows:

"ART. I. That the said Thomas shall, on the first day of March in every year during the life of said Frances, pay to her into her own hands or according to her own order, and to her sole and separate use, and subject to her own disposal as if she were a feme sole and unmarried, the yearly sum of three thousand dollars.

"ART. III. That the said Thomas shall invest for or pay to the said Frances at such times, in such proportions, and in such manner and form as she shall direct and require, to and for her sole and separate use and subject to her own disposal by will, deed, or writings in nature thereof, or otherwise to all intents and purposes (notwithstanding her coverture) as if she were a feme sole and unmarried, the sum of fifty thousand dollars; but if the said sum of money or any part thereof shall remain unpaid, or shall not be invested during her life, and if the said Frances shall not by deed or will or writing in nature thereof, or by some other act, give, grant, dispose, or direct any payment, investment, or application of the same, then the said sum of

money, or so much thereof as shall remain not paid, given, granted, disposed, or directed to be invested, paid, or applied, shall be considered as lapsing, and the charge therefor as extinguished for the benefit of said Thomas."

See pp. 13 and 14 of printed Record.

Her husband having died, Frances Devereux made her will, in which she declared her intention to execute all powers vested in her, and particularly those powers created in her favor in said deed; and appointed executors.

See pp. 18 et seq., printed Record.

In the year 1845 Mrs. Devereux executed a "deed of explanation" to the effect that the said annuity of $3,000 was but the interest on the gross sum of $50,000, and was to abate proportionally as that sum charged should be diminished.

See p. 72, printed Record.

There were various payments made to Mrs. Devereux, of which accounts were rendered as described in the testimony (pp. 141 et seq.); and upon 22 June, 1846, Mrs. Devereux signed the paper, EE, p. 155, agreeing that the amount due was $29,664.60 with interest from that date, subject to be corrected as to the items therein particularly mentioned.

In June, 1847, W. D. Cooke stated the account between T. P. Devereux and Mrs. Frances Devereux, up to June 21, 1847, (see p. 156, Exhibit BB,) showing a balance due of $25,036.97.

At the final hearing, it was declared that said Frances had executed her power of appointment only so far as was necessary to pay off the legacies bequeathed in her will, after applying thereto such assets as remained after paying her debts, &c.

The case presented by the will is not that of a defective execution of a power of appointment; but it is a case of the execution of the power in part and a non-execution as to the residue.

So far as it was necessary to resort to the fund to pay debts or to satisfy legacies, it is a good appointment; but beyond that there is no appointment, defective or otherwise.

Sec. 8, ch. 119, Rev. Code N. C. (1855.)
Acts 1844, c. 88, sec. 5.

By the terms of her will, she intended to exclude the plaintiffs from any benefit derived from this fund.

While equity will interfere to aid an attempted execution of a power of appointment to pay debts, and will divert a fund appointed to legatees to satisfy creditors, yet it will not interfere in a case of non-execution.

Adams Eq., 100.
1 Story Eq. Juris., 175.
2 Chann. on Powers, ch. 23, sec. 2.
2 Sug. on Powers, ch. 10, sec. 1 to sec. 6.
Brown vs. Higgs, 8 Ves., jr., p. 570.

In particular equity will not interfere in cases where by contract the fund, if unappointed, is extinguished for the benefit of him who takes the land subject to the charge.

Equity will not deprive him of such a substantial benefit which he secured by agreement.

Holmes vs. Coghill, 7 Ves., jr., 499.
Same case on appeal.
12 Ves., jr., 206.
Adams Eq., 99.

Had Mrs. Devereux made an appointment for the benefit of her estate generally, as to the residue not specifically devised, she would have died intestate; but if as to this fund she be intestate, it is to go to Thomas P. Devereux as a quasi-remainderman, under the terms of the deed itself. The deed did not give an absolute ownership.

Boyce vs. Walter, 9 Dana (Ky.) R., p. 482.

2. The deed of explanation is an admission and solemn declaration under seal by Mrs. Devereux, and against her interest, of a mistake in the preparation of the deed of set-

tlement.—(See Ex. X., p. 72 and p. 122.) As such it would have been admissible as evidence to reform that deed.

Adams Eq., p. 171.

It was acted on by the parties interested, and binds those claiming under her.—(See Ledger, p. 167 et seq. Statements EE, BB.) It may be taken as a covenant not to demand more than, by the terms of that paper, she claimed to be her due.

It would be against conscience to ignore such a formal and solemn act (relied on by Thomas P. Devereux, and acted on by Mrs. Devereux during her life) in favor of those whom she expressly declared in her will were not to be benefited by this fund.

3. In the 3d article of the decree it is declared that Thomas P. Devereux is not liable to account with the plaintiffs as executor of Frances Devereux—nor especially for such part of her estate as came into the hands of Seymour Whiting as administrator of Frances Devereux.

Thomas P. Devereux was never executor.

See proceedings of Probate Court, pp. 81–86, printed Record.

The probate of a will in North Carolina is a matter *in rem*.

St. John's Lodge vs. Callender, 4 Ir. Law, 343.

After proving the will, it was regular for the court to allow him to renounce.

C. J. Ruffin in Mitchel vs. Adams, 1 Ir. Law, p. 298.

Sawyer vs. Dist. of Margaret Dozier, 5 Ir. Law, p. 97.

Seymour Whiting was regularly appointed administrator pendente lite, and also cum testamento annexo.

pp. 97 and 98, printed Record.

See his account, p. 88.

There is no evidence that he was, as such, the agent of T. P. Devereux, or any one else.

He was the agent and active friend of Mrs. Frances Devereux.

See p. 142 et seq.

5 and 6. In the 5th article of decree it is declared that the exhibit EE, p. 155, should be regarded as an account stated.

The paper was executed after consideration. It is signed by Mrs. Devereux, after deliberation.—(See pp. 146, 147.) The amount found to be due absolutely was $29,664, which was more than the amount appearing to Mrs. Devereux's credit on that date in the Ledger, (see items, balance due June 21, 1846, $28,974,96, "Ledger," p. 172,) while the amount was liable to be increased if the four items objected to by Mrs. Devereux therein be found in her favor.

The paper was acted on.

See "Ledger," p. 172.

See statement, W. D. Cooke, p. 156.

The evidence throughout shows that Mrs. Devereux was in nowise under the control of her son, T. P. Devereux; that she interposed on all occasions her trusted friends and agents, men of high respectability and standing, in their dealings; that they dealt at arm's length. That before any statement was agreed to, she passed on it with consideration, and if her views were not acceded to, the matter in dispute was referred—the awards being favorable to her rather than to her son.

See pp. 154 and 157.

In like manner the account "*BB*," stated by W. D. Cooke, is a stated account.—(See p. 156; Power of Attorney, p. 157; and testimony W. D. Cooke, p. 151.)

See Powell vs. Noye, 23 Barb., N. Y., 185.
Stenton vs. Jerome, 54 N. Y., (9 Sick.,) 480.
Lockwood vs. Thorne, 11 N. Y., (1 Kern,) 170.
Kock vs. Bonitz, 4 Daly, N. Y., 117.
Hutchinson vs. Bank, 48 Barb., 594.
Brown's case, 4 Halst. Eq. (N. J.,) 803.

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